

**PLAINTIFF FEDERAL TRADE COMMISSION’S
STATEMENT OF UNCONTESTED MATERIAL FACTS**

I. THE PARTIES

1. Plaintiff Federal Trade Commission (“FTC”) is an independent agency of the United States government created by the FTC Act, 15 U.S.C. § 41 *et seq.* The FTC is charged with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce.

2. Defendant Zaappaaz LLC (“Zaappaaz”), also doing business as Wrist-Band.com, WBpromotion.com, CustomLanyard.net, and WB Promotions, is a Texas corporation with its principal place of business at 35 Cadence Court, Richmond, Texas 77469. Zaappaaz transacts or has transacted business in this District and throughout the United States. PX 3 ¶ 6; PX 115 ¶ 6 (admitted by Defendants).

3. Zaappaaz has advertised, marketed, distributed, or sold merchandise to consumers throughout the United States. PX 3 ¶ 6; PX 115 ¶ 6 (admitted by Defendants).

4. Defendant Azim Makanojiya is the founder and president of Zaappaaz. PX 115 ¶ 7 (admitted by Defendants).

5. Mr. Makanojiya founded Zaappaaz in 2008. PX 22 at 26:21-23; PX 115 ¶ 7 (admitted by Defendants).

6. Mr. Makanojiya has controlled and managed Zaappaaz since its formation in 2008. PX 115 ¶ 7 (admitted by Defendants).

7. Mr. Makanojiya provided testimony on behalf of himself and as Defendant Zaappaaz’s corporate designee on August 11 and 12, 2021, December 14, 2021, and February 3, 2022. PX 22 at 8:2-9:10; PX 42 at 234:8-11; PX 47 at 504:25-505:8; PX 51 at 7:2-10.

8. In addition to Zaappaaz, Mr. Makanojiya owns 10 or more other businesses. PX 22 at 29:1-11.

9. Some of Mr. Makanojiya's other businesses sell personal protective equipment ("PPE") including Ionized LLC and Ionized Consulting. PX 22 at 29:14-30:12, 57:2-11.

10. Zaappaaz shares its warehouse with Ionized LLC and Ionized Consulting. PX 42 at 294:8-24.

II. ZAAPPAAZ'S GENERAL BUSINESS ACTIVITIES

11. Zaappaaz was formed in 2008. PX 115 ¶ 7 (admitted by Defendants).

12. Zaappaaz markets and sells consumer goods, including customized merchandise such as wristbands, lanyards, keychains, can coolers, and various PPE, to consumers throughout the United States and internationally. PX 3 ¶ 11; PX 115 ¶ 11 (admitted by Zaappaaz).

13. Zaappaaz sells these goods through its websites, www.Wrist-Band.com, WBpromotion.com, and CustomLanyard.net. PX 3 ¶ 12; PX 115 ¶ 12 (admitted by Zaappaaz).

14. Zaappaaz's websites are "all the same." Mr. Makanojiya testified,

So if you go to these websites, they're the same exact website, same database, same everything. It's just the domain is different. So, for example, if you go to wrist-band.com, your home page is going to show wristbands, but if you go to CustomLanyard.com or CustomLanyard.net, you're going to see CustomLanyard on the home page, but the products integration is the same exact on all the domains.

PX 22 at 107:3-108:14.

15. Zaappaaz began selling PPE and related products in March 2020. PX 1 ¶ 44; PX 22 at 109:9-16.

16. Mr. Makanojiya was Zaappaaz's only US employee up until January/February of 2020 when he hired Khalil Maknojiya to run Zaappaaz's day-to-day operations so he could focus on another business and his family. Azim Makanojiya and Khalil Maknojiya were Zaappaaz's only employees until Khalil Maknojiya left the company in March 2021. PX 22 at 13:13-14:1, 15:22-16:3, 16:12-25, 17:13-18, 22:22-25, 23:10-12, 24:13-15, 41:6-42:3. Azim Makanojiya stated, "I've been the sole person that runs the company here in the States." *Id.* at 22:19-25.

17. Prior to hiring Khalil Maknojia, Azim Makanojiya ran the day-to-day operations of Zaappaaz. PX 22 at 23:1-4.

18. Azim Makanojiya hired Khalil Maknojia to “handle wire transfers, handle CSR reps in India, add[] and remove[] products [from Zaappaaz’s website], give[] authorizations to add and remove products, update [product] prices, give guidance on the delivery of products” PX 22 at 18:21-19:20.

19. Despite placing Khalil Maknojia in charge of day-to-day operations, Azim Makanojiya was “always the CEO.” At all times, Khalil Maknojia reported to Azim Makanojiya. PX 22 at 21:13-21, 36:23-37:3.

20. While working for Zaappaaz, Khalil Maknojia was also known as “Kyle.” PX 22 at 52:2-14.

21. Any emails sent out or received by either Azim Makanojiya or Khalil Maknojia could be seen by the other. PX 22 at 54:7-21.

22. Zaappaaz also used email aliases for its employees including the alias Mike@Wrist-Band.com. Mr. Makanojiya explained:

There is no Mike. Mike -- so just to give you a perspective of how these e-mails are structured, Azim is the main e-mail, and they have other aliases under the same e-mail. It’s the same e-mail box, but it’s different aliases under that same e-mail box. So there’s not different e-mail log-ins. Azim is there. Kyle is there. . . . It just depends on who you want to choose to send a reply to. But Mike is just an alias in case if a customer wanted to message a supervisor, this would come straight into that mailbox which is handled – it’s our inbox. It’s mine and Khalil’s inbox. Let’s put it that way.

23. All emails that went to Mike@Wrist-Band.com went to Azim Makanojiya and Khalil Maknojia. PX 22 at 54:7-55:3.

24. Other email aliases used by Azim Makanojiya and Khalil Maknojia included Azim@Wrist-Band.com and Azim@CustomLanyard.com and all the emails sent to those addresses went into one e-mail box. PX 22 at 54:7-56:11.

25. Zaappaaz employs a website developer name Priyank Vaish from an Indian company called Stealth Mode Private Limited. Mr. Vaish, who has worked with Zaappaaz since 2008, provides coding and website development services. PX 22 at 52:25-53:10.

26. Mr. Vaish made changes to Zaappaaz's websites between March and August 4, 2020 subject to Azim Makanojiya's and Kyle Maknoji's instructions. PX 22 at 53:11-54:6; PX 117 at 17:8-26.

III. ZAAPPAAZ BEGAN SELLING PPE DESPITE KNOWING OF SHIPPING AND DELIVERY DELAYS

A. Zaappaaz's Pre-Pandemic Asian Dropship Business

27. Prior to March 2020, 99% of Zaappaaz's customer shipments came from Asia and, for the most part, the company did not ship products from the United States. PX 42 at 424:6-13.

28. Chandler Liu was and is Zaappaaz's Asian "vendor from day one when we started wristbands" and was and is Zaappaaz's "guy who produces promotional products in China." PX 22 at 61:15-62:17.

29. Zaappaaz started working with Mr. Liu when Mr. Makanojiya founded the company in 2008. PX 22 at 63:13-15, 69:2-6.

30. Mr. Makanojiya described Mr. Liu as a "trading company" and "broker." PX 22 at 63:16-64:2.

31. Mr. Liu processed Zaappaaz's orders. PX 22 at 63:19-23, 73:7-8.

32. Mr. Makanojiya stated he has "no relationship with the suppliers that [Mr. Liu] use[s]" and "consider[s] Chandler as my manufacturer." PX 22 at 63:19-23, 72:17-21, 73:25-74:8.

33. Mr. Makanojiya testified that he routinely communicated with Mr. Liu regarding order status, including shipping status. PX 22 at 75:12-76:1.

34. Prior to the pandemic, Zaappaaz obtained 90% of its promotional products from Mr. Liu. PX 22 at 71:12-20.

35. Mr. Liu's team in China packaged 99% of the promotional goods for Zaappaaz's customers. PX 22 at 74:24-75:4.

36. Mr. Liu also shipped the goods to Zaappaaz's customers. PX 22 at 75:5-6.

37. Mr. Liu provided production oversight of the shipments. PX 22 at 75:7-11.

38. Mr. Liu printed the shipping labels. PX 22 at 94:8-13.

39. While Mr. Liu provided Zaappaaz with 90% of its promotional products, the other 10% were provided by "various [other] vendors," including Yaoli, Bruce, USKY, USB, and Skyee. These were very small vendors. PX 22 at 76:11-22.

B. Zaappaaz's Computerized Order System

40. Zaappaaz maintains its order information in a database it describes as "our custom-built system in our backend." PX 22 at 84:15-85:13.

41. When customers order products from Zaappaaz's website, the order information goes into this backend system. PX 42 at 235:20-25.

42. The order information includes the order number, order date, delivery date, shipping days, and the ordered product. PX 42 at 236:1-7, 238:2-9.

43. This order information was transferred to Zaappaaz's Chinese supplier's [Mr. Liu] computer system. PX 42 at 236:1-7.

44. After a consumer completed a website order, Zaappaaz's "backend sends an API signal to Chandler's system." PX 22 at 79:8-18.

45. When Mr. Liu's computer system received the corresponding information, he processed the order and shipped it out. PX 22 at 80:19-81:5, 82:21-83:1.

46. Mr. Makanojiya explained, "So if it was from China . . . it would go into the Chinese API system or would flow into there and they would ship it out and they would send us the tracking back." PX 42 at 235:2-12.

47. Mr. Liu fulfilled the order based on this information. PX 42 at 236:8-10.

48. Mr. Liu printed the FedEx label and then shipped the product directly to Zaappaaz's customers. PX 42 at 236:11-13.

49. After Mr. Liu shipped the products, his computer system sent the FedEx tracking number to Zaappaaz's computer system. PX 42 at 236:16-237:1.

50. The tracking number was the only piece of information that Mr. Liu sent back to Zaappaaz's computer system. PX 42 at 236:19-237:17.

C. When Zaappaaz Began Selling PPE, It Was Already Aware of Supply Chain Delays Associated With the Pandemic

51. On February 27, 2020, Mr. Makanojiya's payment processor Braintree's Risk Team emailed Mr. Makanojiya stating, "Your WB Promotion account was recently flagged due to a recent decrease in your processing volume. We noticed today there was a large spike in refunds and a big drop off in sales." Braintree asked for more details including financial information. PX 50.

52. On March 12, 2020 at 5:02 pm, Mr. Makanojiya replied saying, "Our production has slowed down and supply chain has been distrusted [sic] due to corona virus. We are working with customer[s] in [sic] case by case basis to resolve all orders that are being delayed." PX 50.

53. At 5:28 pm that same day, Mr. Makanojiya also stated, "We have our vendors slowly coming back online but we are not full throttle yet. But I'm sure things will get back to normal soon. Currently we have limited the orders we are accepting." PX 50.

54. On March 3, 2020 at 10:27 am, when Mr. Makanojiya had asked his vendors, "Have we updated our rush delivery for all products especially wristband and Lanyard's [sic]," they told him at 11:27 am they "Removed rush options from bands and lanyards." PX 66 at 0012144

55. They also noted "[m]any orders still being delayed." PX 66 at 0012145. Mr. Makanojiya responded, "ok ill [sic] talk to chandler about this." *Id.*

56. On March 16, 2020, Mr. Makanojiya acknowledged, “Yes a lot of things [are] closing” and “Business will be very slow.” PX 66 at 0012152.

57. By March 26, 2020, Zaappaaz had not provided Braintree with the requested information, and Braintree noted to Mr. Makanojiya, “It appears that your processing has continued to decline with spikes in refunds.” PX 50.

58. On April 3, 2020, Braintree emailed Mr. Makanojiya acknowledging that the decline in Zaappaaz’s sales was “directly related to the outbreak of COVID 19 as Azim said in prior communication.” PX 50.

59. That same day, Braintree also told Zaappaaz that it was placing a temporary funding hold on Zaappaaz’s processing account because the company was selling medical products, despite having the necessary approval only for the sale of promotional products. It asked Zaappaaz to remove those medical products from the website and provide the previously requested financial information. PX 50.

60. By May 1, 2020, having not heard back from Zaappaaz, Braintree warned it would terminate Zaappaaz’s account if the company did not remove medical products from its website by May 8, 2020. PX 50.

61. Braintree suspended Zaappaaz’s account on May 10, 2020. *See infra* ¶ 310.

D. Zaappaaz Shifted to Marketing PPE on A Rush Basis Despite Knowing of Supply Chain Delays

62. Mr. Makanojiya testified that he began selling PPE when the city of Houston reached out to him asking if Zaappaaz could provide the city with face masks because it knew he sourced products from abroad. He stated,

I provided them some masks, and then once the city knew that I got the masks, they -- another couple of institutions reached out to me. Then I was like okay, I’ll start bringing in masks. So I started bringing in masks. Then I started getting customers that started calling can you provide this, can you provide that. So it kind of led to that process.

PX 22 at 109:17-110:3.

63. From March through December 2020, Zaappaaz relied on several PPE suppliers to find inventory. PX 22 at 111:11-14.

64. As with their promotional products, Defendants' main PPE supplier was Chandler Liu. PX 22 at 110:21-23, 111:11-16, 113:20-114:4.

65. According to Mr. Makanojiya, Mr. Liu could fulfill the PPE orders immediately. PX 22 at 110:24-111:1.

66. Mr. Liu used his FedEx accounts or Zaappaaz's FedEx accounts to ship PPE to Zaappaaz's customers. PX 22 at 116:14-20.

67. Defendants also sourced PPE production from another supplier, Yaoli. PX 22 at 111:11-112:2.

68. Yaoli packages the products, and ships them from her house unless "the packages are huge, like 50 boxes, she'll just basically leave it at the factory," take the shipping labels there, and have FedEx pick them up there." PX 22 at 112:20-113:5.

69. Unlike Mr. Liu, Yaoli acted as an intermediary between Zaappaaz and PPE vendors. PX 22 at 114:5-20.

70. Zaappaaz also had a partner in Malaysia that sold gloves to the company. PX 42 at 291:23-292:1.

71. These smaller vendors packaged and shipped the goods to Zaappaaz's customers 90% of the time. PX 22 at 76:23-77:6.

72. About 10% percent of the time, however, Mr. Liu shipped the goods out on behalf of the smaller vendors when the goods were too big for them to ship or they needed special certifications. PX 22 at 77:7-19.

73. The smaller vendors used FedEx, UPS, and DHL to ship but mostly FedEx and UPS. PX 22 at 77:20-25.

74. Zaappaaz sourced hand sanitizer from US suppliers because “That was the only options [sic].” PX 22 at 131:16-20.

75. When Zaappaaz started selling PPE in March 2020, it advertised PPE as “in stock” and for “same day” and rush shipment. PX 115 ¶¶ 9, 14; PX 11 ¶ 12.

76. On March 3, 2020, FedEx suspended its on-time money-back guarantee. PX 22 at 133:6-18.

IV. Zaappaaz’s PPE Website Ordering Process

77. On Zaappaaz’s website, consumers clicked on specific PPE products for details about shipping, inventory, delivery, product specifications, and price. *See e.g.*, PX 1 ¶ 31.b.iv; *see also*, *e.g.*, *id.* at ¶ 21.b.iv, Attach. U.

78. The website then required consumers to enter their desired quantity (step 1) and select a guaranteed delivery date (step 2). In some instances, step 2 provided consumers with the option of free shipping or paying a shipping premium, which purportedly resulted in faster delivery. *See, e.g.*, PX 1 ¶¶ 28b.i-v, 31.b.i-iv.

79. While consumers filled in this information, a box appeared with rolling FedEx tracking numbers of shipments to the United States, reinforcing Defendants’ claims that products are in-stock and ship quickly. *See, e.g.*, PX 1 ¶ 18.d.i-ii, Attachs. L, M, N.

80. Prior to purchasing the products, Zaappaaz’s website asked its customer to review the orders in their carts. This “MY CART” webpage provides the products’ shipping time, production time, and promised delivery date. *See e.g.*, PX 73 ¶ 13, Attach. B.

81. After consumers purchased products, Zaappaaz emailed them order receipts identifying the product, the production time, shipping time, and the delivery date. *See, e.g.*, PX 1 ¶ 31; PX 118 at Attach. AM.

82. These emails were generated by Zaappaaz and sent to consumers. PX 22 at 83:18-84:6.

83. Mr. Makanojiya stated, “when you place an order, literally two or three seconds after your order has been placed, you get a confirmation email.” PX 42 at 256:7-21.

84. According to Mr. Makanojiya, this confirmation email gets generated whether the Texas warehouse (*see infra* Section VI.B for discussion of Texas warehouse shipping) or Mr. Liu is shipping the products to consumers. PX 42 at 257:5-8.

85. Once Zaappaaz’s backend computerized system receives the shipment tracking number a second email is automatically sent to consumers stating that “Items from your recent order have been shipped.” PX 42 at 250:9-251:3, 252:7-25, 257: 20-258:2; *see, e.g.*, PX 23 at 2-3.

86. The second email sent to consumers contains the tracking number. PX 22 at 83:13-17.

87. Mr. Makanojiya explained,

Instance number two is when whoever is shipping, either it’s my warehouse or if it’s China, is shipping, we send out – once we receive back from Shipping Easy or we receive API tracking back from China, once my system receives it, within five to ten minutes it automatically sends out an email to the customer saying your order has shipped, this is your tracking.

PX 42 at 257:5-19.

88. During the ordering process for promotional products on Zaappaaz’s website, consumers choose production and shipping times. PX 22 at 78:16-25.

89. Mr. Makanojiya explained, “So [a consumer] would pick a production time, which is a plus, and then a shipping time, which is a plus, and then the addition to that would give you a delivery time.” PX 22 at 79:1-7.

90. He stated, “You’re essentially taking the addition of production time and shipping time. . .[to get to] the guaranteed delivery date.” PX 22 at 104:5-8.

91. Mr. Makanojiya explained,

So if you choose -- like in wristbands, in wristbands, there is a production time and shipping time because you have to produce the wristbands, and that takes X amount of time. We offer different production times, and that is because, for wristbands, if you want to produce 100 wristbands in one day, we need five molds. If you want to produce it in five days, then we only need one mold. So that’s the production behind it.

Now delivery dates, how do we make it and it’s ready to go, do you want it in one day, do you want it three days, do you want it five days or seven days? So those are the options. With the addition of those two gives you a delivery date.

PX 22 at 105:3-18.

92. The order processes for PPE and promotional products differed in that “[a] PPE product doesn’t necessarily have a production [time] except for certain items, which is the cloth mask.” PX 22 at 105:20-106:7.

93. Mr. Makanojiya testified,

The cloth mask is a custom item because it’s not only something I can pick up and just ship it. It requires me to pick it up, print your logo on it, and then ship it. So that now requires a production. But like, for example, masks, like surgical masks, do not require any production. Pick up the box and then ship it. So you would only choose a shipping time in that frame -- in that aspect.

PX 22 at 105:24-106:7.

94. Zaappaaz sells promotional products through purchase orders but when it started selling PPE it did not accept purchase orders and required upfront payments as opposed to accepting payment on net 30, 60, or 90 bases. PX 47 at 548:5-22 (stating that customers must pay upfront when they order products).

V. ZAAPPAAZ AGGRESSIVELY ADVERTISED ITS PPE DURING THE COVID-19 PANDEMIC

A. Zaappaaz Advertised Through Multiple Channels

95. Zaappaaz used multiple channels to advertise PPE including Google, Microsoft, Omnisend, Mailchimp, and ASI. PX 42 at 295:7-12, 300:11-15, 347:5-7.

96. The company advertised online and via email. PX 42 at 297:1-18.

97. Diran, who works for the marketing agency Marketing Marvel, handles Zaappaaz's Google AdWords and Microsoft advertising. PX 42 at 297:22-298:17, 347:12-15; *see also* PX 117 at 20:5-18.

98. Google is Zaappaaz's most lucrative advertising platform. PX 42 at 296:11-13.

99. Zaappaaz uses Google AdWords. PX 42 at 296:14-16.

100. Mr. Makanojiya explained how AdWords works: "If you type in 'custom plastic cups,' you'll see ads. I think most likely sometimes they have three ads or four ads on the top of the page. That is Google AdWords." PX 42 at 296:17-22.

101. Omnisend is an "email subscription marketing software." PX 42 at 300:11-15, 301:9-13.

102. Khalil Maknojiya created the content for the marketing emails sent through Omnisend. PX 42 at 301:17-25.

103. Defendants disseminated advertisements for PPE via Omnisend. PX 42 at 300:11-14; PX 30.

104. Zaappaaz also used Microsoft to advertise its PPE. PX 34; *see also* PX 42 at 331:3-12.

B. Zaappaaz's Aggressive PPE Advertising

i. Quick Shipping and In-Stock Claims

105. On its website and in Google ads Zaappaaz advertised PPE as "GUARANTEED TO SHIP TODAY." *See e.g.*, PX 3, Exs. D, F at 7, 8; PX 1, Attach. M; PX 31 at Row 4767, Column C; *see also* PX 42 at 309:5-19.

106. Zaappaaz advertised same day shipping on its website and in Google ads, stating: “IN STOCK – SHIPS SAME DAY,” “GUARANTEED TO SHIP TODAY,” “Ships Same Day. 1-Day Delivery,” and “Delivered in 24 Hours.” PX 3, Exs. A, B, C at 5-6; PX 1, Attachs. U, V; PX 31 at Row 5242, Column C; *id.* at Row 5644 Column C.

107. Wrist-band.com promised immediate availability of PPE stating: “GET YOUR PERSONAL PROTECTIVE EQUIPMENT NOW,” “All Goods in Stock Ready to Ship,” and “ALL PRODUCTS IN STOCK & SHIP WITHIN 24 HOURS.” PX 8, Attach. 6; PX 12, Attach. 9 at FTC0000631.

108. With respect to “PPE Essentials,” Zaappaaz stated “ALL PRODUCTS IN STOCK READY TO SHIP.” *See e.g.*, PX 1 ¶ 22, Attach. W.

109. Zaappaaz used Omnisend to send customers email advertisements claiming, “ALL OF THESE PRODUCTS ARE FULLY IN STOCK, READY TO SHIP SAME DAY AND DELIVER IN 24 HOURS” and “SHOP ALL PPE PRODUCTS NOW.” PX 30 at Sheet 1; *see also* PX 42 at 300:11-15.

110. Email advertisements between March and August 2020 stated, among other things: “Face Masks Available While Supplies Last!” (March 26-27, 2020)[Rows 369-374]; “Reusable Cloth Face Masks Now Available!” (April 7, 2020)[Rows 354-355]; “Order In Stock Thermometers Today!” (April 13, 2020)[Rows 341-342]. PX 30 at “5e3cc8b48a48f76320d70081.csv” tab.

111. Zaappaaz used PPE-related search terms for its Google ads to match them with what customers were searching for including, *e.g.*, “rush sanitizers dispenser,” “painters face shield same day delivery,” and “kn95 masks in stock.” PX 33 at Row 1537 at Column A, Row 7538 at Column A, Row 135937 at Column A.

ii. Guaranteed Delivery Claims

112. Zaappaaz’s Google ads and email ads promised delivery dates. *See, e.g.*, PX 33 at Row 135436, Column A, Row 23561 at Column A (using “thermometer guaranteed next day delivery” and “non contact infrared thermometer guaranteed delivery date” as search terms to match its ads with customers’ searches); PX 30 at Row 298, Column B (email advertising, “No Touch Thermometers Available for Next Day Delivery!”).

113. The wrist-band.com website also provided “Guaranteed Products Delivered On” dates to consumers during the ordering process. *See e.g.*, PX 3, Exs. E, F at pg. 8.

114. When Zaappaaz’s website prompted consumers to choose delivery dates, a claim stating “Guaranteed Products Delivered On” appeared below the boxes where consumers populated their delivery choices. *See, e.g.*, PX 3, Exs. E, F at pg. 8; PX 1 ¶ 18(d), Attach. L.

115. Prior to processing consumer’s credit cards, Zaappaaz’s website provided a review of their orders in their “cart” and included the promised delivery date. *See, e.g.*, PX 73 ¶ 13, Attach. B.

116. In October 2020, Defendants were still guaranteeing delivery of PPE. PX 42 at 263:1-264:20; PX 24 at 1 (Mr. Makanojiya telling employees to “take note that in [sic] future we need let customer know that the delivery is not guaranteed on PPE items”).

iii. Promised Refunds/100% Money Back Guarantee Claims

117. Zaappaaz advertised “100% Satisfaction” to its customers on its website. *See e.g.*, PX 1, Attachs. S, T; PX 8, Attach. 6.

118. Zaappaaz promised “SATISFACTION GUARANTEED.” *See e.g.*, PX 3, Ex. H at 10, ¶ 29.

119. The wrist-band.com website promised: “MONEY BACK GUARANTEED”; “100% MONEY BACK GUARANTEE.” *See e.g.*, PX 3, Ex. G at 10; PX 1, Attachs. E, F, G, H, I, J, K, O, P, Q, R, W.

120. Susan Alimonti, a consumer, explained that “[t]he company promised me a refund for shipping fees of \$52.90,” but she “never received a refund from wrist-band.com.” PX 2 ¶¶ 25-26.

121. Amy Russell, a consumer, “never received any refund from wrist-band.com for the expedited shipping charges [she] paid for despite repeated promises from the company to provide this refund.” PX 8 ¶ 31.

iv. **Consumers Purchased From Wrist-Band Based on Their Advertising Claims**

122. One consumer, Susan Alimonti, “chose to order from wrist-band.com because their website stated it had face shields in stock, that the masks would ship the same day, and that they guaranteed delivery dates.” PX 2 ¶ 4.

123. Another consumer, Rhiannon Guevin, chose to purchase automatic sanitizer dispensers from wrist-band.com because “The dispensers were described as in-stock, so I decided to place an order.” PX 5 ¶¶ 3-4.

124. Andrew Li, a consumer, stated that he “decided to order from wrist-band.com because it had the items in stock and because of the quick delivery.” PX 6 ¶ 4.

125. Mechelle Braswell, a consumer, saw that wrist-band.com “had the products in stock and offered expedited shipping, including shipping within 24 hours.” PX 7 ¶ 5.

126. Amy Russell, a consumer, saw wrist-band.com’s advertisements that “All Products in Stock & Ship within 24 Hours.” PX 8 ¶ 8.

127. Amy Russell chatted with the on-line support team through their website to confirm the availability of the PPE she was interested in purchasing, and was assured the products were in stock. PX 8 ¶ 9.

128. Based on the representations “that the PPE would be shipped within 24 hours,” Ms. Russell purchased the products. PX 8 ¶ 10.

129. Jason Pierson, a consumer, chose to purchase thermometers from Zaappaaz because the wrist-band.com website stated that the products were “in stock” and “shipped the same day.” PX 10 ¶¶ 5-6.

130. Carol Faber, a consumer, researched companies that sold PPE and “chose wrist-band.com because it had PPE in stock, offered same day shipping, and guaranteed delivery dates.” PX 11 ¶ 7; PX 12 ¶ 5.

VI. ZAAPPAAZ DID NOT HAVE THE RESOURCES OR INVENTORY TO SHIP AND DELIVER PPE AS ADVERTISED

A. Disruption to Defendants’ Drop-Ship Platform from Asia

131. When Defendants began selling PPE in March 2020, Zaappaaz was still shipping PPE to customers directly from China, and not from its Texas warehouse. It shipped PPE from China up until the end of March 2020. PX 22 at 117:12-118:1.

132. According to Mr. Makanojiya, Zaappaaz’s problems with shipments and delivery began in late March/early April 2020. PX 22 at 116:21-118:5.

133. When asked how the pandemic affected the shipment and delivery of Zaappaaz’s products, Mr. Makanojiya stated,

Okay. So I think the start of March everybody was trying to -- I guess the middle of March people were starting to kind of fathom what was happening. End of March, everybody went in panic mode, I guess.

Shipping transactions spiked all around the world, and people started to realize that PPE was in shortage. So companies like mine, as well as others, buckled up and started ordering and I guess congested FedEx’s hub. I’m assuming that from the articles that I have read. That is one scenario.

The other scenario is overnight multiple Chinese regulations were changing. U.S. government was saying that bad PPE products are being sent from China to the U.S., so in retaliation China halted all shipments that were at the hub and had them sent back to the shippers and had them certified, which caused another delay. That’s one update.

Second update, China now says you cannot ship directly to consumers. You have to ship directly -- you cannot ship directly to consumers. You have to ship directly to a

business or -- you can ship directly to an address, but it has to be more than X amount of kilos. Basically if a customer wanted 10 masks, he was not able to get 10 masks directly delivered to him. It had a certain weight limit put on each shipment that left China. I guess they wanted more volume to go out rather than quantity go out. So that was another update.

And then the third update was all was shipped back to the shipper and reclassified any PPE items that needed to be shipped, needed to be stamped and certified by a local authority that certifies medical devices or whatever their category was before it can be shipped out. And this is a span of 30 days that these changes are happening on a daily basis. Now -- and this starts around April-ish [2020].

On FedEx's side, limitations are put on overnight based on how many kilos you can ship. FedEx -- so we used to ship about thousand plus kilos maybe. They limited us to 20 kilos. So what we had, we had multiple accounts with FedEx. So the loop hole in that was we were able to ship multiple -- we had multiple limitations on each account, so that kind of helped us kind of push the products out.

And then the other restriction was that you could only ship one package per day to an address. So what we did is friends and family gave their addresses, and we shipped to those individual friends and family's addresses and then consolidated all into our warehouse and shipped it directly to customers. So those just are some scenarios.

PX 22 at 118:17-120:24

134. On April 1, 2020, FedEx announced that due to an increase in demand, customers could only ship a limited amount of weight per day. PX 22 at 120:8-16, 135:4-9.

135. These obstacles affected Zaappaaz's ability to deliver products on time. PX 22 at 121:21-24.

136. Mr. Makanojiya testified, "So I guess it was a group of issues that were just kind of colliding together [affecting shipment and delivery]." PX 22 at 121:5-20.

137. Mr. Makanojiya testified,

I mean -- I guess it comes back to the same story. There was a constraint in getting the products delivered or released from customs or these blockages that were happening overnight caused the delay for us to receive the inventory. Yes, there was - these are overnight changes that we didn't anticipate. Yes, because of that, you definitely have shortages of products that you could fulfill.

PX 22 at 125:7-15.

138. Mr. Makanojiya testified, “shipments bound for America [were] to be held in port until the Chinese government reviewed, confiscated, and released them. Like I said, our goods were just being held up at the port. . . . I can tell you that our goods were sitting at the port.” PX 22 at 149:12-25.

139. Also, Zaappaaz “experienced a logistical issue because . . . the U.S. started complaining that Chinese were sending counterfeit products, which caused the Chinese to retaliate by, I guess, delaying the products and making it much harder for goods to be exported out.” PX 22 at 150:6-13.

140. Mr. Makanojiya stated,

we were only allowed to ship a certain amount, like commercial goods. I think it was -- I don’t know what the limitations on kilos was. It was a certain amount of kilos we had to ship every shipment and one per address because they wanted to limit the small packages going out of China. They wanted large bulk packages to go out so the demand could be met.

PX 22 at 180:8-16.

141. Zaappaaz became aware of China’s export restrictions “much earlier” than April 10, 2020, “probably first week of April . . . I think it was the first week of April when things were happening on a daily basis.” PX 22 at 150:20-152:20; PX 32.

142. The majority of the limitations on shipping from China occurred in March, April and May 2020. PX 22 at 120:25-121:4.

B. Zaappaaz’s PPE Fulfillment System

143. In an attempt to address the problems associated with shipping PPE to consumers directly from China, Zaappaaz started shipping PPE from its Texas warehouse to consumers “around end of March to start of April [2020].” PX 22 at 118:2-5.

144. Zaappaaz started shipping from its Texas warehouse in early April 2020 and stopped shipping from China around the same time. PX 22 at 179:11-180:1; *see also id.* at 19:22-20:23.

145. Zaappaaz's Texas warehouse is located at 12505 Reed Road, Suite 110, Sugarland, Texas. Prior to March 2020, this warehouse also served as Zaappaaz's headquarters and office. PX 22 at 39:14-24.

146. According to Mr. Makanojiya,

This is the peak of -- of -- I don't know what word to use here. This is the peak of chaos at least around the world, I would say. Our India office was shutting down. We were transitioning from an office to an in-home just like I mentioned yesterday. Phone lines were jamming up because of the number of calls we were getting, or we didn't have people to answer calls, chats. Systems were going down. We use tawk.to, which is a third-party chat system, which was having issues because of volume of customers that they were getting, so that was causing a shutdown there.

PX 42 at 248:1-13.

147. From April 2020 onwards, Zaappaaz did not ship orders from China directly to consumers. PX 22 at 179:15-19.

148. Mr. Makanojiya testified,

We're a company that never ships goods from the U.S., period, or let's not say never. Ninety-nine percent of the time we do not ship goods from the U.S. And times were changed, and we had to transition over to a warehouse in the U.S., which if you consider that a duty change, yes, he had to handle a warehouse in the U.S. where he had to manage inventory and ship out inventory from our U.S. office.

PX 22 at 20:6-23.

149. He also stated that "The disability was probably receiving products and getting the products out the door. Maybe that's where the constraint was." PX 22 at 121:25-122:9.

150. Zaappaaz had problems maintaining enough inventory in their Texas warehouse to fulfill customers' orders. PX 22 at 125:25-126:18.

151. As Mr. Makanojiya explained,

I'm trying to answer it the best of my ability. If we -- if we advertise that we are shipping -- we're shipping sanitizer dispensers, we had sanit[izer] dispensers. We shipped sanitizer dispensers. But there was -- there was an issue in processing those orders, meaning like from our facility onwards, if that makes sense. In terms of inventory, we never -- I don't think there was a scenario where we were short on inventory because the goods were available in China. The goods were -- wherever

goods were available here, we were able to process. But we did not have -- I don't think we had an inventory constraint.

PX 22 at 125:25-126:18.

152. Mr. Makanojiya explained the difficulties Zaappaaz experienced in getting inventory to its Texas Warehouse:

For example, if you have something at your house right now and you want to get it to--you want to ship it to Houston, whatever that parameter is between your house and Houston, whatever is doing that, that is the logistical aspect I'm talking about. Wherever -- whatever entities play in between those two Point A and Point B, whoever is playing in between that, that's what I'm talking about logistically. Either it's custom. It's either transportation. Either it's U.S. custom.

So rules and regulations were changing because not an influx of these types of products were coming in as medical products, and they were -- rules were changing because people like us who sell promotional products were starting to import medical masks.

So I think the U.S. government started making a little more enforcement on how to bring those in and how to validate them, make sure the public was safe and all that stuff. Things were changing on a daily basis and that -- those are the parameters in between that I'm referring to that caused the delay in these issues.

PX 22 at 127:11-128:9.

153. Zaappaaz, for example, was "only allowed to ship a certain amount, like commercial goods [to the U.S.]." Mr. Makanojiya stated,

I think it was -- I don't know what the limitations [sic] on kilos was. It was a certain amount of kilos we had to ship every shipment and one per address because they wanted to limit the small packages going out of China. They wanted large bulk packages to go out so the demand could be met.

PX 22 at 180:9-16.

154. Zaappaaz could not ship directly to its warehouse. Mr. Makanojiya explained, "I could only ship one package per day to my warehouse. So I shipped it to friends' and family's addresses. We picked it up, and then we brought it to our warehouse." PX 22 at 180:17-24.

155. These restrictions lasted three to four weeks, after which point Zaappaaz could ship everything directly to its Texas warehouse. PX 22 at 180:25-181:14.

156. Mr. Makanojiya stated, “The next system . . . we didn’t need to use multiple addresses. We could ship everything directly to our warehouse.” PX 22 at 181:8-14.

157. Mr. Makanojiya testified, “So now [late April 2020] everything is coming to our warehouse causing further delay and now being shipped from our warehouse to the customers. So we are waiting for the goods to arrive at our warehouse as we adjusted to the new Chinese laws that were just updated around this period. Before this, everything was shipped to the customer directly.” PX 47 at 632:14-633:1.

158. Mr. Makanojiya stated there were backorders. When asked how to define backorder, Mr. Makanojiya explained,

In this era that we are in right now, March, April and the peak of COVID, a back order means we are supposed to have 20 employees, and we ended up having 10 employees come the next day. A back order means that the government is shutting down all businesses and you need an essential certificate to operate. That means it’s a back order. Our India office has shut down because the government has shut down and we’re not able to take calls anymore and we are not able to process the orders. That’s considered a back order. I mean, it entails a lot of “ifs” and “thens” in this scenario.

PX 47 at 666:25-667:14.

159. Domestically, Zaappaaz used FedEx most frequently for shipping from its warehouse. PX 22 at 186:10-23; PX 42 at 373:25-374:4.

160. Zaappaaz used several FedEx entities to ship products to consumers including FedEx Ground, FedEx Express, and FedEx Freight. PX 42 at 421:9-422:23; *see infra* ¶¶ 399-450.

161. Zaappaaz also used UPS and the United States Postal Service to ship goods from its Texas warehouse. PX 22 at 186:18-23; PX 42 at 374:5-12; *see infra* ¶¶ 451-456.

162. Internationally, it “wasn’t [Zaappaaz’s] call” and “was based on their algorithm,” but Mr. Makanojiya “believe[d] it was mostly FedEx” although UPS was also used internationally. PX 22 at 186:15-23; *see also* PX 42 at 374:18-375:5.

163. Zaappaaz had a FedEx Ground trailer outside its warehouse. Mr. Makanojiya testified, “We take the packages, pack it and put it inside a trailer. That trailer has to move from there, and that’s not something that we move. It’s FedEx that hitches to that trailer and takes it away on a daily basis.” PX 22 at 124:21-125:2.

164. According to Mr. Makanojiya, Zaappaaz “had the goods either in our U.S. warehouse or we had the goods in China.” PX 22 at 174:15-175:4.

165. According to Mr. Makanojiya,

We had -- we had the goods either in our U.S. warehouse or we had the goods in China. That was our reason for believing that we could ship the same day, and we had eight years of previous history of FedEx shipping on time and delivering on the guidelines that we were told. So that was our basis [for the same day shipping claims].

PX 22 at 175:2-8.

166. In April or May of 2020, Zaappaaz chartered two planes from Asia to the US to deliver PPE inventory to Zaappaaz’s Warehouse. PX 42 at 358:14-359:22; *see also id.* at 361:2-5 (the PPE was inventory to ship to consumers from Zaappaaz’s Texas warehouse).

167. When asked why, Mr. Makanojiya explained,

At this time, we’re basically understanding that the pandemic is -- is something new to everyone. Every company is adjusting. Every company is making new rules. Every customs is making new rules. We needed to bypass the third-party layers such as FedEx and UPS and take control over -- over the shipment of products, so we essentially just got a plane and stuffed it in with all the stuff and brought it over to the U.S.

PX 42 at 358:22-259:6.

168. On May 28, 2020, Zaappaaz was informed they had shipped 25 boxes of hand sanitizer to a customer and almost all of it was damaged. PX 40.

169. On May 31, 2020 Defendants’ FedEx agent informed them that their account “has been temporarily suspended for too many failures.” PX 47 at 685:25-686:20; PX 116.

170. On June 1, 2020, Zaappaaz's FedEx representative Darren Schmidt told Zaappaaz that shipping hand sanitizer via Express to Hawaii and Alaska was subject to specific packaging regulations. PX 58.

171. On July 7, 2020, Zaappaaz's FedEx representative, Darren Schmidt, sent Zaappaaz packaging instructions from FedEx's Packaging Engineer regarding shipping hand sanitizer. PX 55.

172. The Federal Aviation Administration ("FAA") began investigating Defendants in the summer of 2020 because of packaging issues related to hazardous materials and leaking sanitizers. PX 47 at 685:25-686:20; PX 46 at 0016259.

173. The FAA required Defendants to obtain the necessary packaging certification. PX 47 at 685:25-686:20; PX 45 at 0016247 (noting that federal regulations "require hazardous materials employers to ensure their employees who are engaged in the preparation and packaging of hazardous materials meet the training requirements").

174. On October 7, 2020, Khalil Maknojia ("Kyle") told an FAA safety inspector, "After many revisions to our packaging as well as our supplier, we have fixed previous issues with leaking of gallon sanitizers. Attached are photos of how we are now packaging our gallon sanitizer products. This prevents any damage or leaking with the bag and stickers on the box." PX 45 at 0016250.

175. When the safety inspector asked Khalil Maknojia when revisions to Zaappaaz's shipping policies were implemented, he responded, "August 31, 2020." PX 45 at 0016248-49.

176. While a FedEx representative had provided training to Zaappaaz's staff members, the FAA required further certification for Zaappaaz's staff. PX 45 at 0016246-47.

177. When Zaappaaz started shipping PPE from its Texas warehouse, it used Shipping Easy, "a software that manages orders and prints labels." PX 22 at 93:18-94:2, *see also* PX 42 at 241: 5-19.

178. Orders were uploaded into ShippingEasy manually and then automatically. PX 47 at 628:17-629:5.

179. Mr. Makanojiya then explained how to “push order [through ShippingEasy].” PX 66 at 0012168.

180. Zaappaaz needed the Shipping Easy software to print shipping labels. PX 22 at 93:24-94:2.

181. The “warehouse team would print the labels. On the labels it would say what needs to be shipped and we would slap the labels on, package it, and put it inside a FedEx trailer.” PX 42 at 241:14-19.

182. Shipping Easy sent the tracking numbers to Zaappaaz’s backend system. PX 22 at 187:15-188:14 (“once [Shipping Easy software] printed the label, that software would automatically send a code back to our backend and update the tracking.”); *see also* PX 42 at 242:10-22.

183. In May or June of 2020, Zaappaaz and Ionized Consulting entered into a PPE-related agreement. “The collaboration was to bring on more resources to manage customers that we were getting.” PX 22 at 57:2-21.

184. Mr. Makanojiya explained,

Customer -- customer service was already being handled in India. I think the reason we brought on Ionized Consulting was because of our whole business model was changing from overseas shipping to customers to warehouse shipping to customers, and obviously it was just me and Khalil who were the only operators here. So managing that was becoming a little difficult, so we brought on Ionized Consulting to help us with the domestics -- to help us with the warehouse aspect of processing orders, yes.

PX 22 at 57:22-58:14.

185. Ionized Consulting and Zaappaaz also had an inventory-sharing agreement through which Zaappaaz purchased PPE inventory from Ionized Consulting. PX 22 at 60:1-23.

186. As of August 2021, Zaappaaz shipped 99% of its products from its warehouse. PX 22 at 181:18-182:25.

187. When asked when Zaappaaz started shipping product on time, Mr. Makanojiya stated, “it was a rollercoaster.” He said,

I mean if you would graph our delivery metrics, you could see that it’s a rollercoaster. It gets better, and then something happens and then it spikes again. It gets better, and something happens. Again as we speak today, we’re having issues again. So we are -- we are -- I don’t think anything has normalized as of yet.

PX 42 at 468:22-469:15.

188. Mr. Makanojiya testified Zaappaaz is “still facing limitations as of right now” and while the “progression line” has moved forward since March 2020, but “even as of today we are still facing limitations [created by COVID-19].” PX 22 at 49:3-50:14.

C. Zaappaaz’s Call Center in India

189. As of December 2019, Zaappaaz employed a company in India called Stealth Mode Private Limited to provide a call center and Customer Service Representatives (“CSRs”). PX 22 at 12:10-17, 15:22-16:3, 42:12-43:11.

190. Stealth Mode Private Limited contracted out the CSRs to Zaappaaz, and they were treated as independent contractors. PX 22 at 12:10-17, 35:7-20.

191. Eroze and Fatima Khan owned Stealth Mode Private Limited and managed the call center and CSRs out of a building the Khans rented in India. PX 22 at 14:2-24, 15:22-16:3, 37:9-13, 42:12-43:14.

192. The Khans reported to Azim Makanojiya and later also reported to Khalil Maknoja. PX 22 at 37:14-20.

193. From March through December 2020, Khalil Maknoja and Azim Makanojiya provided instructions to the Khans. PX 22 at 154:7-21 (“[I]f you’re referencing from March to

December [2020],” the “chain of command” was “it goes through Khalil and then it goes through me.”)

194. CSRs handled “anything related to customer transactions,” including handling customer calls and complaints and following up on customer issues. PX 22 at 12:1-9.

195. CSRs also handled “back-end related stuff” such as inputting tracking numbers into the database where Zaappaaz maintained its customer order information (i.e., the backend). PX 22 at 12:1-9.

196. The Khans provided directions to the CSRs. PX 22 at 154:4-6.

197. The CSRs had access to the email address “Sales@Wrist-Band.com.” PX 22 at 64:18-65:3.

198. Fatima and Eroze Khan also had access to the email “Sales@Wrist-Band.com.” PX 22 at 65:4-7.

199. Stealth Mode Private Limited contracted out web designers to Zaappaaz to create digital images and proofs for Zaappaaz’s promotional products and later PPE. PX 22 at 14:2-17, 15:22-16:7.

D. The Pandemic Restricted Operations at Zaappaaz’s Call Center

200. Mr. Makanojiya testified that the shutdown in India affected Zaappaaz’s ability to ship and deliver orders on time. He stated, “Well, we were having – obviously there was a transition happening in India. The shutdown is happening in India. That took a whole aspect to it.” PX 22 at 121:5-11.

201. Zaappaaz’s CSRs worked out of the Khan’s office building in India up until March or April of 2020, when COVID-19 caused the Indian government to “shut down everything in India,” which resulted in the closure of the Khan’s office building. PX 22 at 43:15-45:1, 44:8-15 (“I know things started going down around mid-March.”).

202. Mr. Makanojiya testified that the pandemic and closure of the office resulted in “limited resources.” PX 22 at 45:2-13.

203. When asked whether the closure of the Indian office resulted in the complete shutdown of services provided by the CSRs, Mr. Makanojiya stated, “[The CSRs] were employed still. They were still getting paid. But limited resources, yes. Limited resources. Maybe they didn’t have a computer at the house. Maybe they did have a computer and they were just using chat services. They were making use of their time with the resources that they had.” PX 22 at 45:2-13; *see also id.* at 45:14-46:14.

204. The pandemic’s effect on the CSR’s health and safety also created limited resources for Zaappaaz. Mr. Makanojiya stated, “I will also consider resources as customer service reps getting sick. That’s also a resource for me. So if they are down, then that’s also a resource.” PX 22 at 49:3-50:4.

205. In response to COVID-19’s impact on Zaappaaz’s Indian CSRs, Zaappaaz hired CSRs in the United States “to pick up the CSR calls when India was down” in April, May, and June 2020. PX 22 at 65:19-68:22.

206. Mr. Makanojiya stated that delays in shipping and delivery were caused, in part, by Indian “employees not wanting to come to work or getting sick or taking precautions because of family at home, whatever that situation was. That was also taken into effect.” PX 22 at 121:5:20.

207. On April 2, 2020 at 8:51 am, Fatima Khan told Mr. Makanojiya, “There are back to back calls since yesterday and we have limited people even we are taking calls and using maximum resources available.” PX 66 at 0012159.

208. In April 2020, the Khans asked Mr. Makanojiya, “Are we going to get our stocks by Tuesday,” “gowns and therm any estimate time we receive,” and “are we expecting therm, gowns, cloth mask anytime by tomorrow.” PX 66 at 0012162, 0012165, 0012169.

209. On April 3, 2020, Mr. Makanojiya told the Khans, “A lot of calls missed [with orders] and ad spend us [sic] over 200k yesterday.” PX 66 at 0012159; *see also* PX 47 at 615:23-616:25 (“I mean, if you want to spend money on ads, you want to make sure your output is there also. That was the concern.”); *see also id.* at 0012157, 0012160 (Fatima congratulating Mr. Makanojiya and stating, “we crossed 200k” and later “Congrats our first 1 million + sale in a day.”).

210. On April 17, Ms. Khan stated, “We really hope and pray [everything will be ok] as we are really worried with all complaints and disputes . . .” PX 47 at 618:7-623:7; PX 66 at 0012163.

211. On April 28, 2020, Mr. Makanojiya told the Khans, “no gowns and no thermometers,” and “no cloth mask.” PX 66 at 0012168.

212. On April 29, 2020, Mr. Makanojiya asked the Khans to create “a listing urgently” for gallon hand sanitizer on the Zaappaaz website because “the one we currently have [in] gallon is liquid” but “the new one is gallons gel material.” He said, “for now put a random image.” PX 66 at 0012169-0012170.

213. When Mr. Makanojiya asked, “So anything besides that do you have any urgent orders,” Ms. Khan replied “[m]any in sheet,” and “[a]s simple as masks, face shields kn95.” PX 66 at 0012168; *see also* PX 67 at 0020604 (Khalil Maknojia informing Azim Makanojiya that, “I have not gotten thru [sic] urgent orders listed by CSRs in urgent orders group . . .”); *id.* at 0020615 (Khalil Maknojia telling Azim Makanojiya, “Fatima and I have been working thru [sic] the disputes daily” and “Shes [sic] been handling all emails . . . and updating the spreadsheet for me to ship out what we can.”); *id.* at 20626 (Azim Makanojiya instructing Khalil Maknojia, “Every order that is going to go to customer I need you to update the sheet with the tracking and cross verify.”); *id.* at 0020627 (attaching “SHIPMENT LIST”).

214. She said, “Atleast[sic] we can move those out to reduce losing on those simple disputes.” PX 66 at 0012168.

215. On April 28, 2020, Ms. Khan asked, “Can we pls prioritise [sic] inventory for chargebacks.” PX 66 at 0012167; *see also* PX 67 at 0020615.

216. Ms. Khan added, “We have many orders due and I have no tracking on chargebacks to give.” PX 66 at 0012167; *see also id.* at 0012206 (Ms. Khan asking Mr. Makanojiya [on July 16, 2020 at 12:31 pm], “atleast [sic] the open disputes we have can we ship them first priority pls for wipes so i can reply on disputes with tracking.”).

217. On May 1, 2020, Ms. Khan asked Mr. Makanojiya, “cloth mask when we [sic] expecting” and he replied, “Next Tuesday.” PX 66 at 0012171.

218. On May 2, 2020, Mr. Makanojiya told the Khans to “Let CSR[s] know that for any big order request to give my cell number and inform me ASAP.” PX 66 at 0012172.

219. He also said, “only give [my number] when it’s a government or legitimate company email . . . no gmail emails please.” PX 66 at 0012173.; *see also id.* at 0012175 (Azim ordering Ms. Khan to “push all orders that are like that with multiple products” instead of single product orders).

220. On May 4, 2020, Mr. Makanojiya told the Khans, “any defective thermometer let team know to ask what is issue first with thermometer.” He said, “if it’s giving wrong reading then ask customer [sic] then can callobrate [sic] it” and “if its [sic] still defective they can return to us and we will replace. . . . but we will not issue refund.” PX 66 at 0012174.

221. On May 6, 2022, Ms. Khan told Mr. Makanojiya, “We have pushed all labels for all chargebacks till date and I personally message khalil as well for priority ones to move out on chargebacks. That’s the reason we have been pushing on all those orders to ship priority as the queue was increasing each day.” PX 66 at 0012176.

222. In May 2020, Mr. Makanojiya asked “to use the current inventory for new orders.” PX 67 at 0020619.

223. On June 2, 2020, Ms. Khan told Mr. Makanojiya that there were “back to back” consumer calls and also a “high volume of [consumer] emails pending.” PX 66 at 12193.

224. On June 11, 2020 Ms. Khan told Mr. Makanojiya there were “Many dispenser issues what we do?” and she also told him “Manual going along is wrong as well.” PX 59 at 0012255.

225. On June 24, 2020, Mr. Makanojiya told Mr. Khan, “Look at all keyword customer got zero results” and “Very important we have someone always daily look at [keywords and results].” PX 66 at 0012202; *see also id.* at 0012199 (Mr. Makanojiya instructing Khans to “make[] sure someone is linking the keywords that show zero results.”); PX 67 at 0020601 (Azim Makanojiya telling Khalil Maknojiya, “we need to optimize keywords . . . More more.”); *id.* at 0020602 (Azim Makanojiya telling Khalil Maknojiya to “upload all the PPE item[s]” and “Then after uploaded let Mary know all keyword [sic] you want to target.”).

E. Defendants Did Not Deliver Orders within Promised Times, Ship as Promised, Have PPE In-Stock and Ready to Ship, Offer Refunds, Honor the 100% Money Back Guarantees, or Properly Fulfill Orders

226. On April 19, 2020, Zaappaaz announced shipment delays in a notice to customers, explaining unexpected delays from China. PX 22 at 135:17-22, 139:1-8; PX 4; PX 25; PX 30 at Rows 330, 331.

227. The April 19, 2020 notice was sent out to all of Zaappaaz’s customers. PX 22 at 139:21-25.

228. The notice stated,

Unfortunately, challenges regarding COVID-19 have delayed the entire supply chain industry for shipments coming from China. New Chinese export restrictions have been implemented this month which are significantly slowing down the shipment of PPE and non-PPE products to the United States and worldwide. We are working tirelessly with partnering logistical companies and expect to fulfill all orders in the upcoming week. We are anticipating current restrictions on the total amount of inventory that can be shipped per day will be removed this week. This will help trickle down our backlog and deliver all remaining PPE orders in our queue. All inventory -is in-route. We are shipping all received inventory the same day to you. . . .

We understand we have not been the best at communicating or being transparent with you.

PX 4; PX 25;¹ PX 22 at 142:14-143:2.

229. The notice did not offer refunds or cancellations. PX 22 at 177:3-14; PX4; PX 25.

230. On May 3, 2020, Zaappaaz emailed all the customers in its database a notification called “Delivery Update on Disposable Gown Orders.” PX 22 at 134:5-10, 143:7-11, 144: 18-145:7; PX 26; PX 27; PX 30 at Row 328.

231. This notice was not posted on Zaappaaz’s website. PX 22 at 143:7-144:17; PX 30 at Row 328.

232. The notice stated,

We are working 24 hours a day, 7 days a week to answer your questions and deliver your orders on time. However, we sincerely apologize for any potential miscommunications and delays in delivery. Although most orders are arriving on time, some customers may face delays regarding orders for gowns. We are currently facing challenges in receiving imported gowns on time due to logistical covid-19 constraints to meet the significant, unanticipated demand. However, we anticipate to deliver all gown orders between May 8 and May 15.

PX 26; PX 27.²

233. The notice did not offer refunds or cancellations. PX 26; PX 27.

234. On May 3, 2020, Zaappaaz emailed its customers a “Delivery Update on Reusable Cloth Face Masks.” PX 28; PX 29; PX 22 at 135:23-25, 145:8-146:9; PX 30 at Row 329.

235. This notice was not posted on Zaappaaz’s website. PX 22 at 145:8-20; PX 30 at Row 329.

236. The notice stated,

We are working 24 hours a day, 7 days a week to answer your questions and deliver your orders on time. However, we sincerely apologize for any potential miscommunications and delays in delivery. Although most orders are arriving on time, some customers may

¹ Defendants produced what appear to be two identical copies of the April 19, 2020 notice (*i.e.*, PX 4 and PX 25).

² Defendants produced what appear to be two identical copies of this May 3, 2020 notice re gowns (*i.e.*, PX 26 and PX 27).

face delays regarding orders for cloth face masks. We are currently facing challenges in receiving imported cloth face masks on time due to logistical covid-19 constraints to meet the significant, unanticipated demand. However, we anticipate to deliver all cloth face masks orders between May 8 and May 15.

PX 28; PX 29.³

237. The notice did not offer refunds or cancellations. PX 28; PX 29.

238. During discovery, the FTC asked for MITOR notices to consumers, including all notices that appeared on their website. PX 16, Requests 7(o), 8, 9, 10.

239. Defendants have not produced any copies of MITOR notices they sent to consumers. PX 73 ¶ 8, 12, 13.

240. During discovery the FTC asked for all delay notices that appeared on Defendants' websites. PX 16, Requests 7(o), 8, 9, 10.

241. Defendants have not produced any evidence that the delay notices appeared on their website, including notices on every order page. PX 73 ¶ 8.

242. During discovery the FTC asked for documents showing Defendants obtained consumer's consent for shipping delays. PX 16, Requests 7(o), 12, 17.

243. Defendants have not produced any documents or records showing they obtained consumer's consent for shipping delays. PX 73 ¶ 9.

244. Mr. Makanojiya testified that he and Khalil Maknojia jointly decided to issue these notices. Khalil Maknojia wrote the notices and Mr. Makanojiya reviewed them. PX 22 at 136:9-137:6.

245. In April 2020, CSRs were telling complaining customers "[t]he orders are getting delayed because of the CVOID19 [sic]" and "order and product demand is very high and we are trying our best to meet the needs and reach suppliers all over the USA. Trucks full of inventories are

³ Defendants produced what appear to be two identical copies of this May 3, 2020 notice re cloth face masks (*i.e.*, PX 28 and PX 29).

being drained out in a day or less and we have to run 24x7 mass production and stock these now.”

PX 53 (“Logistically we did not anticipate these strains. We should receive all inventory by next week. We’re receiving inventory daily. Customs and FedEx has restricted how much can be shipped to our warehouse on a day to day.”). PX 53.

246. Mr. Makanojiya admitted that pre-pandemic, Zaappaaz would not contact consumers to offer them refunds or cancellations when it couldn’t ship order on time. PX 22 at 102:18-21.

247. According to Mr. Makanojiya, Zaappaaz’s policy was to provide refunds or prorated refunds to consumers when they called to seek refunds or cancellations for late shipments. PX 22 at 102:22-103:2.

248. Mr. Makanojiya testified that when consumers asked for a refund because they had not received the product by the promised delivery date, Zaappaaz’s policy was to issue a refund. PX 22 at 167:20-168:3.

249. But, if consumers had already received the product, Zaappaaz would provide a return label to the send the product back. PX 22 at 168:1-5.

250. According to Mr. Makanojiya this policy is in Zaappaaz’s terms and conditions and written “everywhere.” PX 22 at 168:11-18.

251. Zaappaaz provided these instructions to the CSRs. PX 22 at 168:6-10.

252. Mr. Makanojiya did not know when the policy was instituted. PX 22 at 169:3-6.

253. According to Mr. Makanojiya,

the refund cancellation policy has been set for eight years before that. This was nothing new. It was -- this is standard policy. If the products are not shipped, then you can issue a refund. If the products are shipped, send a return label and get it back and issue a refund. That’s just the standard policy. It’s not something that we created in March of 2020.

PX 22 at 174:4-14.

254. Mr. Makanojiya also testified that PPE was non-refundable:

We -- I believe we were not able to take products back because of the PPE protocol -- the COVID-19 protocols we had in place. We didn't want contaminated goods coming back to us because we were not a facility to recertify them. The policy was not as -- if the order did not ship, we would not issue a refund. That was not the policy.

PX 22 at 171:22-172:6.

255. Defendants admitted Zaappaaz's CSRs misrepresented this policy to consumers. PX 22 at 172:8-15.

256. As of May 2020, Zaappaaz's website "return policy" said nothing about PPE being non-refundable or issuing refunds when orders had not shipped yet. PX 42 at 352:2-353:17; PX 38; PX 1 ¶¶18 (b)(iv).

257. As of May 2020, the "terms and conditions" on Zaappaaz's website said nothing about PPE being non-refundable or issuing refunds when orders had not shipped yet. PX 42 at 352:22-356:17; PX 39; PX 1, ¶18 (b)(v), Attach. J.

258. As of May 2020, the PPE product pages said nothing about PPE being non-refundable. PX 73 ¶ 11.

259. CSRs were not authorized to "issue any refunds or cancellations. They were only authorized to accept a refund and cancellations," but had to receive approval from the Khans before the consumer would be issued the refund. PX 22 at 172:20-173:4.

260. The Khans made decisions about refunds and cancellation and Mr. Makanojiya supervised them. PX 22 at 173:12-174:3.

261. When Zaappaaz did not ship products within promised times, Zaappaaz did not contact its customers. Customers had to contact Zaappaaz. PX 22 at 177: 21-25.

262. Mr. Makanojiya stated, "It was not possible for us to contact them" because Zaappaaz was processing 2,000 orders, 3,000 order a day. It was logistically impossible to call 3,000 callers every day." PX 22 at 177:21-178:4.

263. Mr. Makanojiya testified that its policy after August 2020 has been that if Zaappaaz cannot deliver products within the promised shipping time, the company emails them about the delay but does not offer them refunds or the opportunity to cancel the order. PX 42 at 471:13-472:4.

264. Zaappaaz advertised liquid sanitizer on its website despite having run out of it. With no notice to consumers, it sent them gel sanitizer instead of liquid sanitizer without obtaining consumers' consent to the substitution. PX 47 at 636:19-637:17; PX 66 at 0012169.

265. Zaappaaz had no photos of the gel sanitizer it was selling and placed a random stock photo on the website of products they did not sell. PX 47 at 636:19-637:17; PX 66 at 0012169.

VII. ZAAPPAAZ RECEIVED THOUSANDS OF COMPLAINTS FROM CONSUMERS, MANY OF WHOM IT IGNORED OR LIED TO

266. FTC Investigator, Adam Rottner, reviewed consumer complaints about Zaappaaz that were received via the FTC's Consumer Sentinel Network ("Sentinel"). PX 56 ¶¶ 7-8.

267. Mr. Rottner also reviewed complaints produced by Defendants. PX 56 ¶¶ 10.

268. After deduplicating and culling the combined complaints, complaints remained for 1,396 orders. PX 56 ¶¶ 11-13.

269. Mr. Rottner summarized information about these complaints in his complaint summary. PX 54; PX 56.

270. Mr. Rottner's summary shows that 510 orders were shipped late. PX 56 ¶ 103; PX 54.

271. Mr. Rottner's summary shows that 969 orders were delivered late. PX 56 ¶ 103; PX 54.

272. 100 consumers complained that they received the wrong product. PX 56 ¶ 106; PX 54.

273. 133 consumers complained that they received an inferior or defective product. PX 56 ¶ 106; PX 54.

274. In January 2020, Defendants did not receive any customer complaints. PX 54 at complaint summary tab, Column H [Complaint Date], filter by “April.”

275. In April 2020, Defendants received 820 complaints. PX 56 ¶ 106; PX 54 complaint summary tab, Column H.

276. Consumers often communicated with Zaappaaz through a website chat feature or email. *See, e.g.*, PX 6 ¶ 6; PX 7 ¶ 21; PX 8 at ¶ 9; PX 9 at ¶ 11.

277. Multiple consumers complained that the shipment and delivery dates came and went with no contact from Defendants. *See, e.g.*, PX 8, Attach. 1 (order receipt noting April 1 order, 1-day shipping time, April 3 delivery); PX 6, Attach. 1 (order receipt noting April 10 order, 2-day shipping, April 17 delivery); PX 9, Attach. 2 (order receipt noting April 15 order, 2-day shipping, April 22 delivery); PX 7, Attach. 1 (order receipt noting April 7 order, 3-day shipping/April 16 delivery (gloves), 4-day shipping/April 17 delivery (thermometer), 1-day shipping/April 9 delivery (thermometer); PX 2, Attach 2 (order receipt noting April 5 order, 1-day shipping, April 7 delivery); PX 12, Attach. 2 (order receipt noting April 1 order, 1 day shipping, April 3 delivery).

278. Multiple consumers complained that they didn’t receive their orders at all. PX 76; PX 111; PX 80; PX 35.

279. Multiple consumers complained that their orders weren’t shipped when promised. PX 108; PX 112; PX 76; PX 83.

280. Multiple consumers did not receive their orders by the guaranteed delivery date. PX 53; PX 108; PX 112; PX 76.

281. On April 8, 2020, a consumer complained that he had ordered no contact infrared thermometers with a guaranteed delivery date of April 1. By April 8, the thermometers had not even shipped out yet. He said, “I have tried calling 6 times today but keep getting a voicemail that is full.” On April 3, he had received an email from Zaappaaz that his order had shipped but FedEx told him Zaappaaz

had just printed the label when he called to inquire. When he reached out to Zaappaaz on April 6 for an update he “had to use the live chat feature since all the call were being ignored and not answered for an extended period of time.” PX 23 at 2.

282. The consumer complained to Zaappaaz,

After not receiving a response, I contacted you once again through live chat and spoke with Andrew Q – see attached. He indicated that the product was shipping and would arrive no later than 4/7/20, or first thing the morning of 4/8. I checked the tracking information and called FedEx again this morning, 4/8/20, and they said they still have not received the package from the shipper and it’ll be 1-2 days after they actually get the package. I have tried calling 6 times but cannot get anyone to answer the phone. I spoke with Bryant in you live chat again this morning, and he promised a return phone call within 1 hour. I still have not received any phone call or follow up and it’s been 4-5 hours.”

PX 23 at 2.

283. To placate complaining consumers, Zaappaaz frequently told customers that their tracking information was forthcoming even when their orders had not shipped. *See, e.g.*, PX 8, Attach. 2 (“[y]our order has already processed and will [sic] share the tracking details shortly”); PX 12, Attach. 4 (same); PX 9, Attach. 5 (“[w]e are checking it with our shipping team and will get back to you soon.”); PX 6, Attach. 2 (“[w]e will share the tracking details once the order is shipped.”); PX 7 (Braswell Dec.), Attach. 4 (“[w]e will share tracking number with you in the next 2 days.”).

284. Consumers were told their orders had shipped when in fact, all that had happened was that a shipping label had been created. PX 112; PX 90; *see also, e.g.*, PX 67 at 0020615 (Azim Makanojiya instructing Khalil Maknojia to tell customer with a pending order of 36000 surgical masks that “it’s shipped” and to “retain that [order] somehow” even though they had not fulfilled order).

285. Multiple consumers made purchases based on in stock representations on Defendants’ website, but were later told that the products were not in stock. PX 71; PX 83; PX 88.

286. After consumers complained about shipping and delivery delays, Defendants offered to refund expedited shipping costs. PX 2 ¶ 18; PX 7 ¶ 23; PX 8 ¶ 18.

287. Consumers were promised refunds but didn't receive them. PX 7 ¶ 35; PX 8 ¶ 31; PX 72 ("Where's the refund you promised?").

288. Moreover, unless consumers also complained to the authorities, these promised refunds were not provided. PX 6 ¶¶ 20-21; PX 9 ¶¶ 31, 34; PX 10 ¶¶ 16-17.

289. Even consumers who did complain have still not received the refunds they were promised for rush shipping charges. PX 8 ¶ 31; PX 7 ¶ 35; PX 2 ¶ 26.

290. On June 1, 2021, FTC Investigator, Adam Rottner, made an undercover purchase from Zaappaaz's desktop website. PX 1 ¶¶ 28-29.

291. Mr. Rottner purchased 10 KN95 Standard Dust-Proof Masks and one box of Vinyl Disposable Gloves, size medium. PX 1 ¶¶ 28-29.

292. When the shipment arrived, the gloves were different from those Mr. Rottner selected and purchased from the Zaappaaz website. PX 1 ¶ 34.

293. On June 1, 2021, Mr. Rottner also made an undercover purchase from Zaappaaz's mobile website. PX 1 ¶¶ 31-32.

294. Mr. Rottner purchased 5 face shields and four bottles of hand sanitizer. PX 1 ¶¶ 31-32.

295. When the shipment arrived, the hand sanitizer was different from those Mr. Rottner selected and purchased from the Zaappaaz website. PX 1 ¶ 35.

296. The website advertised clear plastic bottles with a flip top lid, with the sticker indicating it is 8.4 fluid ounces. PX 1 ¶ 35.

297. The received product was a white bottle with a pump top, and a sticker indicating it is 8 ounces. PX 1 ¶ 35.

298. The pump bottles were not secured or sealed. PX 1 ¶ 35.

299. Mr. Rottner used a kitchen scale to weigh the four bottles of hand sanitizer. PX 1 ¶ 35.

300. The bottles weighed 7.3, 7.3, 7.1, and 5.4 ounces respectively. PX 1 ¶ 35.

301. Multiple consumers complained that they received a different product than they ordered. PX 5; PX 74; PX 81; PX 82; PX 77.

302. Multiple consumers complained that they received defective products. PX 5; PX 85; PX 79; PX 35; PX 75.

303. Shopper Approved provided Zaappaaz with a third-party rating platform that maintained customer reviews for Zaappaaz. After customers ordered from Zaappaaz's website, Shopper Approved sent the customer an email asking for a review. PX 42 at 348:2-13.

304. The reviews are maintained on Shopper Approved's platform and only negative reviews are emailed to Zaappaaz. PX 42 at 348:14-349:17.

305. A May 4, 2020 complaint from Shopper Approved to Zaappaaz stated, "Scam scam scam gloves 3 weeks late still no show." Mr. Makanojiya received the email. PX 42 at 351:5-16, PX 37.

306. A June 29, 2020 negative review emailed to Zaappaaz from Shopper Approved included the complaint "Website/order told me 1-day shipping but a week later it did not come." Mr. Makanojiya received the email. PX 36.

307. Amazon customers consistently complained about packages not arriving. Among Amazon's consumer complaints in May of 2020, among others, were:

"I have ordered two items from this merchant 45 day ago. We never received part of the order which is a set of Disposable Gloves and do not seem to receive any update on when to expect this. Information is below. The time of need for this item has also passed as promised delivery time along with the additional fees for expedited we had paid for a two day shipping is also past due and we no longer need the items due to all the delays (May 17, 2020)."

"This order is over 3 weeks late. I've made multiple inquiries with the vendor. They are refusing to provide a refund (May 9, 2020)."

“On April 19th, I received an email explaining that Wrist-Band was having problems securing inventory and couldn’t fill my order. . . . I have requested a refund three times and they won’t give it to me and they won’t ship my order even though they are shipping the same product to new customers (May 11, 2020).”

“This was ordered on April 4, 2020. I have emailed the company and received no response. They continue to advertise that there are masks available but I have not received mine. (May 11, 2020)”

“Ordered items over a month ago. And have not received my items. Company states they are behind. Requested a refund and they said my items will be shipped soon, that was a week ago and have yet to receive a shipping email. I just want my money back at their [sic] point (May 13, 2020).

PX 52.

308. Multiple consumers were told that their orders were non-refundable. PX 8 ¶ 23; PX 7 ¶ 26; PX 101; PX 78; PX 44.

VIII. Zaappaaz’s Delays Led to Chargeback Disputes

309. Zaappaaz had chargeback disputes related to Braintree, one of their payment processors. PX 22 at 157:1-3.

310. By May 10, 2020, Braintree had suspended Zaappaaz’s payment processing account. PX 15; PX 22 at 204:7-10 (admitting that Zaappaaz’s Braintree suspension was due to “the increase in chargeback volumes”). *See also* ¶ 61, *supra*.

311. PayPal also provided payment processing services to Zaappaaz. PX 14.

312. Zaappaaz had chargeback disputes related to PayPal. PX 22 at 157:4-6.

313. Mr. Makanojiya admitted that PayPal limited Zaappaaz’s account due to an increased number of chargebacks. PX 22 at 201:2-19.

314. By late May, PayPal had locked Zaappaaz’s account and asked the company for documentation to justify its transactions, inventory, and sales incurred over April. PX 14 at 3.

315. To remove account limitations, PayPal wanted an “Explanation of recent increase in non-receipt chargeback claims and disputes” and “invoices specific to medical products listed on your website.” PX 14 at 7 (emphasis added).

316. PayPal also told Zaappaaz its “account was escalated for review by PayPal underwriting to analyze potential underlying risk.” It asked Zaappaaz to provide the company’s most recent two years audited financial statements and interim, year-to-date financials. PX 14 at 5-6.

317. By May 11, 2020, Zaappaaz had not provided the requested information to PayPal and PayPal locked its account. PX 14 at 2-3.

318. By May 26, 2020, PayPal had released the frozen funds to Zaappaaz. PX 14 at 2 (“Please note, we just increased your maximum processing amount to \$575K per month. Any payment volume exceeding this cap will be held for 21 days or released with proof of delivery.”).

319. Fiserv provided payment processing services to Zaappaaz. PX 18.

320. Karishma Sharif worked for Empire Paytech LLC, a company that helped Zaappaaz manage its relationship with Fiserv. PX 22 at 213:17-215:4; PX 17; PX 18.

321. On May 18, 2020, Fiserv emailed Ms. Sharif, “we were just notified by our compliance Group that as a result of Visa disputes that occurred in April the merchant is in Month 1 of Visa’s Standard Dispute Monitoring Program. This program is for merchants that have exceeded Visa’s Dispute thresholds.” PX 18 at 2-3.

322. Ms. Sharif forwarded the email to Mr. Mekanojiya and said, “During our conference call Fiserv had mentioned that CB levels were excessive. If they’re recognized again. Fiserv will provide a remediation plan to you complete, so Fiserv can then have forwarded to the Compliance Dept to forward to Visa.” PX 18 at 2.

323. The forwarded email included Fiserv’s statements, “As this is the first month detected in the ‘Standard’ program no response is required by the merchant. However, in the event the

merchant is detected in this program again next month they will be required to complete a remediation plan.” PX 18 at 2.

324. Mr. Makanojiya knew he was in a monitoring program due to high chargeback rates. PX 22 at 216:7-217:21.

325. In June 2020, because Zaappaaz continued to have high chargebacks, Visa/Mastercard required Zaappaaz to complete a remediation plan. PX 20.

326. On July 27, 2020, Mr. Makanojiya emailed Fiserv and said, “I need to get in touch with someone regarding my [processing account] that is being terminated. I received a letter in the mail.” PX 19 at 3; PX 22 at 218:8-24.

327. On July 29, 2020 he emailed Fiserv, “We need our funds to be released and for this issue to be resolved immediately.” PX 19 at 3.

328. On July 29, 2020, Mr. Makanojiya emailed Ms. Sharif, “I need to know the process for handling any potential refunds or disputes that may arise from customer orders we processed on this account. We do not want to be completely locked out of this account as we must issue necessary refunds.” PX 19 at 2.

329. By October 2020, Fiserv had kicked Zaappaaz off its payment processing platform. PX 22 at 158:23-159:6, 218:19-24; PX 106.

330. On October 15, 2020, Ms. Sharif emailed Mr. Makanojiya a 2020 chargeback report related to Fiserv’s payment processing. PX 42 at 459:22-460:15; PX 48; PX 49.

331. As of October 16, 2020, Fiserv had not released the total amount of reserves it had on hold on behalf of Zaappaaz. PX 22 at 215:5-11, 218:25-219:2; (“They held on to our reserves for about eight months after they terminated us”); PX 17 at 1.

332. Zaappaaz transitioned to using Stripe as a payment processor in March/April 2020 after Braintree terminated/suspended the company as a customer for high chargebacks. PX 22 at 204:1-205:3.

333. In September 2020, high chargeback rates caused Stripe hold on to Zaapapaz's reserves to cover refunds for chargeback disputes. PX 107.

334. Mr. Makanojiya received chargeback dispute information related to Amazon. PX 42 at 468:6-21; PX 52.

335. Amazon kicked Zaappaaz off its payment processing platform "because your order defect rate does not meet Amazon Pay performance target of less than 1%. The order defect metric is based on Amazon Pay A-to-z Guarantee claims and chargebacks. PX 41; PX 103.

IX. ZAAPPAAZ FAILED TO MAINTAIN ADEQUATE SHIPPING RECORDS

336. Apart from the order's tracking number, Zaappaaz's computer system did not track information related to shipping because it "cannot decipher anything The system does not decipher the tracking number. It – it just get the tracking number. That's it." PX 42 at 237:2-17.

337. Mr. Makanojiya admitted Zaappaaz's system did not contain information about inventory. PX 42 at 238:10-13, 239:4-7; 239:25-240:5.

338. Mr. Makanojiya stated, however, that "there was a certain time where on Shipping Easy, we were keeping track of inventory" and he thought "Maybe [it was] December of 2020 when we were able to build that system." PX 42 at 240:3-10.

339. When Mr. Liu sent back information to Zaappaaz about the orders he does not provide any supplier information. PX 22 at 84:7-11.

340. The only shipping information maintained by the Zaappaaz order database is the order tracking number. PX 22 at 85:11-19.

341. The Zaappaaz order database maintains guaranteed delivery dates but not actual delivery dates. PX 22 at 85:20-86:6.

342. Zaappaaz uses the tracking number to determine whether a shipment was delivered but does not maintain actual delivery information this information in its system. PX 22 at 85:20-86:6.

343. Mr. Makanojiya admitted that his backend system did not track refunds or chargebacks. PX 47 at 511:17-512:17, 514:7-515:7.

344. Zaappaaz maintained some complaint information in its system prior to the pandemic, but not complaints received via email. Mr. Makanojiya testified,

Well, it depends on how they initiate the complaint. There's a process where they can initiate a complaint from their account or sometimes they can initiate a complaint via e-mail. If it's via e-mail, which is the most unproductive way to submit a complaint, it's within the e-mails. But if it's within our backend and they submit a complaint from our backend, then yes, we would have that record in our backend.

PX 22 at 86:11-24; *see also* 87:9-22.

345. He explained that before and during the pandemic the backend complaints were initiated via Zaappaaz's websites. PX 22 at 87:23-88:9.

346. Now Zaappaaz is trying to capture all the complaints in its database. PX 22 at 88:15-18.

347. He also testified that as of April or May 2021, "if you say you have an issue with an order, we would create a ticket in our backend, and we would give you the link to the ticket so then you have an easier way to follow up and kind of see what the updates are. But pre-pandemic, no, we didn't have that process." PX 22 at 89:19-90:3.

348. Chat logs, however, do not get transferred to the Zaappaaz order system. PX 22 at 88:22-89:17.

349. When consumers complained to CSR about late orders, CSRs pulled up their order information through their order number and then had access to this order information contained in Zaappaaz's order system. PX 42 at 242:19-243:6.

350. The order information CSRs could see included "customer name, the charge, the product detail, any notes on the order, the tracking, the IP address." PX 42 at 243:1-6.

351. The CSRs could also see whether the FedEx label had been created [or not]. PX 42 at 243:12-15.

352. If the FedEx label had been created but the shipment had not moved, they would have to go to FedEx.com and put in the tracking number to get shipment information because the Zaappaaz order system cannot analyze tracking numbers. PX 42 at 243:16-244:1.

353. Refunds came from Zaappaaz's bank account and from its payment processors reserves. PX 22 at 191:12-23.

354. During discovery the FTC asked for policies and procedures evidencing systems to assure the shipment of merchandise. PX 16, Requests 11, 12.

355. Defendants have not produced policies or procedures evidencing systems to assure the shipment of merchandise. PX 73 ¶ 7.

X. AZIM MAKANOJIYA HAD THE AUTHORITY TO CONTROL ZAAPPAAZ

356. Mr. Makanojiya is the CEO of Zaappaaz. PX 22 at 24:16-22.

357. He does not report to anyone. PX 22 at 25:18-22.

358. Everyone who works for Zaappaaz reports to Mr. Makanojiya. PX 22 at 25:23-26:1.

359. In 2017, Mr. Makanojiya pled guilty, individually and on behalf of Zaappaaz, to charges of price fixing brought by the Department of Justice's ("DOJ") antitrust criminal division. Mr. Makanojiya paid a \$1,923,245 fine and served a one-month prison sentence in May 2019. *See* PX 109 (*US v. Zaappaaz Inc.*, Case No. 4:17-cr-00477 (S.D. Tex. [ECF 37] Dec. 8, 2017))

(Judgment); PX 110 (*US v. Azim Makanojiya*, Case No. 4:17-cr-00478 (S.D. Tex. [ECF 56] May 13, 2019) (Judgment)).].

XI. AZIM MAKANOJIYA HAD KNOWLEDGE OF ZAAPPAAZ’S VIOLATIVE CONDUCT.

360. Mr. Makanojiya serves as the Better Business Bureau’s (“BBB’s”) company contact for consumer complaints. PX 1 ¶ 24.b.

361. Mr. Makanojiya admitted that, between March 2020 and December 2020, he was “absolutely” aware of customer service issues related to Zaappaaz’s PPE shipments to consumers. PX 22 at 37:21-25.

362. Mr. Makanojiya received emails from consumers complaining about delivery and shipment issues. PX 22 at 155:19-156:12.

363. Mr. Makanojiya spoke with complaining consumers. PX 22 at 160:21-161:1.

364. Even though it was the CSRs responsibility to handle consumer complaints, Mr. Makanojiya testified,

The CSRs are in India. I do understand there's a cultural gap there. Many consumers, when they speak to someone internationally, right away think it's fraud, especially when we're selling promotional products and we're starting to sell PPE products. So I started realizing that. I started realizing that the explanation of what was happening here was not being conveyed properly by the CSRs. So any disgruntled customers, they were given my personal cell phone number, as well as Khalil's personal cell phone number.

PX 22 at 161:2-17.

365. Mr. Makanojiya was aware of chargeback disputes with all of Zaappaaz’s payment processors including Stripe, Braintree, PayPal, and Amazon. PX 22 at 156:20-29, 157:23-158:22.

366. Mr. Makanojiya admitted he was aware that consumers were complaining about:

- a. Goods not being shipped within promised times. PX 22 at 161:25-163:24.
- b. Zaappaaz selling products to consumers that were not in stock. PX 22 at 164:3-11.
- c. Refunds not being processed. PX 22 at 164:19-21.

- d. PPE being delivered defective. PX 22 at 164:22-25.
- e. Receiving the incorrect product. PX 22 at 165:14-16
- f. Ordering a medium but receiving a large. PX 22 at 165:17-18.
- g. Ordering one kind of sanitizer but receiving another. PX 22 at 165:19-22.
- h. Tracking label had been created but the product had not been shipped yet. PX 22 at 166:2-5.
- i. Zaappaaz was supposed to have shipped or delivered consumers' orders but a tracking label had not been created yet. PX 22 at 166:20-167:2.
- j. CSRs were lying to consumers that their PPE orders were on their way. PX 22 at 167:4-7.
- k. Zaappaaz's website or advertising said same-day shipping but that was not true. PX 22 at 167:16-19.
- l. Mr. Makanojiya admitted, "I was aware that the goods were not being shipped on time." PX 22 at 161:22-164:2; PX 115 ¶ 21.

XII. DEFENDANTS' MITOR VIOLATIONS CAUSED OVER \$37 MILLION IN CONSUMER HARM

A. The FTC's Summary of Shipping Data

367. FTC analyst Elizabeth Anne Miles summarized data relating to Defendants' PPE sales to determine the orders Zaappaaz failed to ship on time or at all. PX 99 ¶ 4.

368. In creating her summary, Ms. Miles used shipping data relating to Defendants' orders from seven different sources: Defendants, DHL, FedEx Express, FedEx Freight, FedEx Ground, United Parcel Service, Inc. ("UPS"), and the United States Postal Inspection Service ("USPIS"). PX 99 ¶¶ 5-12.

i. Defendants' Master Chart (PX 57)

369. During discovery in this matter, the FTC requested Defendants' produce all order, shipping, and delivery information for PPE orders from March to December 2020. PX 16, Request 7.

370. After a hearing before Magistrate Judge Palermo on October 19, 2021, Defendants were ordered to produce two spreadsheets that provided all order information and all tracking information. PX 43.

371. In response to the Court's order, Defendants produced a spreadsheet with order, shipping, and refund information for sales of PPE between March and December 2020 ("Master Chart"). PX 47 at 508:21-23, 510:13-21, 511:6-20; PX 57 (Master Chart).

372. To create the Master Chart (PX 57), Defendants pulled information from their order database, records from Zaappaaz's vendor Chandler Liu, carrier platforms including FedEx, and payment processor platforms. PX 47 at 511:21-512:12.

373. Zaappaaz had to hire a data specialist to pull order information from Zaappaaz's backend, tracking information from FedEx, UPS, USPS and DHL websites, and refund information from payment processor platforms into one single master spreadsheet. PX 47 at 509:18-510:12.

374. Mr. Makanojiya explained, "[t]his is a lot of data coming from a lot of places, so to put them into a spreadsheet and compiling it is no easy task. So it takes a lot of man hours to do that. So I don't know what that entails individually, but we give [the data specialist] all the data and he merges it all into a single spreadsheet." PX 47 at 510:7-12.

375. In describing how to look up shipping details for the Master Chart (PX 57), for example, he testified, "one of the ways to do it is put the tracking number into Google, find the -- find that information, and put it into an Excel sheet" and "for some of the [orders] . . . to find delivery dates, delivery times, we have to manually go [FedEx website]. There's no other way that I know of." PX 42 at 400:5-401:5; PX 47 at 545:10-16. He also testified that to the extent they did not

provide shipping information to the FTC it was because Google did not pull up relevant shipping details. PX 47 at 545:5-546:4; *see also* PX 42 at 399:2-17, 403:10-15.

376. The Master Chart (PX 57) contains information relating to the following: order identification number, order date, ordered product name, production days, shipping days, the promised delivery date, customer contact information, the total amount paid for the order, the carrier that shipped the order, the shipment tracking number, the date Zaappaaz shipped the order, the shipment delivery date, the customer's payment method, refund amount from Zaappaaz, reason for refund, and total refunds from PayPal. PX 47 at 526:11-13; 526:15-20; 526:22-527:4; 528:8-15; 530:13-19; 531:14-20; 535:20-24; 536:2-15; 544:1-4; 546:5-7; 548:3-4; 549:4-6; 552:12-23; and 588:24-589:14; PX 57 (Master Chart).

377. The number of production days indicates how long it will take to package and ship the order. PX 47 at 526:22-527:6.

378. Mr. Makanojiya testified that production days are determined by, "Volume of orders, variants of packaging. I mean, it's fluctuating in number of orders, availability of how many workers were working at that time, et cetera." PX 47 at 527:7-24.

379. The number of shipping days indicates how long it takes to ship to the customer "after the production days are done." PX 47 at 528:8-15.

380. Production days plus shipping days results in Zaappaaz's guaranteed delivery date. PX 47 at 530:13-19; 531:14-20.

381. Defendants admit the Master Chart (PX 57) does not contain all the refunds issued to consumers. PX 47 at 511:17-19.

382. Defendants had to bring in refund information from its payment processors because their order system did not systematically track refunds. PX 47 at 511:21-512:12; *see also* 514:18-515:7; 520:4-20.

383. Although CSRs would sometimes enter refund data, including the amount and reasons for the refund, Defendants admit the CSRs did not consistently enter refund information into Zaappaaz's backend. PX 47 at 550:24-551:12, 551:25-553:8.

384. "CSRs just type in [the backend] or the management types in why refunds were done." PX 47 at 553:22-554:2.

385. The Master Chart (PX 57) does not contain refund information related to Amazon because Zaappaaz was not able to access it from Amazon's payment platform. PX 47 at 523:19-21.

386. Mr. Makanojiya testified that shipping occurs when the carrier scans the package. PX 47 at 544:1-11.

387. To find the delivery dates and times, Zaappaaz had to manually insert tracking numbers into FedEx's website. PX 47 at 544:15-545:16; *see also* 545:24-546:4 (noting that to the extent there is missing shipment information in the Master Chart (PX 57), Zaappaaz has no records that would fill in the information).

388. Where an order could not be shipped in a single package, each package would receive a unique tracking number. PX 47 at 546: 12-16.

389. "OrderStatus," as reflected in the Master Chart (PX 57), contains the categories "Completed," "Cancelled," and "Refunded." PX 57 (Master Chart).

390. Cancelled means the order was cancelled. PX 47 at 561:17-562:3.

391. "Completed" did not indicate that an order had been shipped. Rather, Mr. Makanojiya explained "Completed," was a "default status" in the Zaappaaz ordering system. PX 47 at 562:4-7.

392. As Mr. Makanojiya explained, "an order gets placed on our system and there's a payment attached to it, by default it goes to completed status." PX 47 at 562:4-7.

393. Refunded meant that the CSR refunded the customer's order. PX 47 at 562:8-10.

ii. DHL Shipping Data

394. DHL provided two spreadsheets, PX 60 and PX 62, in response to a subpoena issued by the FTC. PX 98 ¶¶ 4; PX 60; PX 62.

395. In these spreadsheets, “awb no” refers to “the air waybill number for the shipment.” PX 98 ¶¶ 4.a.i, 4.b.ii.

396. In these spreadsheets, “startclock_dtm” refers to “the date DHL takes possession of the shipment and it is scanned into DHL’s system.” PX 98 ¶¶ 4.a.i, 4.b.ii.

397. In these spreadsheets, “lc _ day” means the “last checkpoint date.” PX 98 ¶¶ 4.a.i, 4.b.ii.

398. In these spreadsheets, “lc_event_cd” means the “last checkpoint event;” and “OK” in this field means “the package was delivered.” PX 98 ¶¶ 4.a.i, 4.b.ii.

iii. FedEx Express Shipping Data

399. PX 86 (FedEx-Express_00093708) and PX 87 (FTC00003086) contain shipment and delivery information produced by FedEx Express to the FTC pursuant to a subpoena. PX 61 at 15:17-16:13, 17:17-19; 30:23-32:5.

400. PX 86 contains information relating to the tracking number, shipment date, shipment delivery date, and shipment delivery time. PX 86; PX 61 at 22:23-25; 23:1-2; 24:24-25:2; 25:3-16.

401. PX 87 contains information relating to the tracking number, ship date, pickup date and time, and delivery date and time. PX 87; PX 61 at 32:6-10; 32:11-33:11; 37:20-23; and 53:23-54:6; 32:18-33:11.

402. “Pickup Time” indicates the date and time the package was first picked up and scanned by FedEx Express. PX 61 at 32:18-33:11.

403. Ship date is when the package is shipped, meaning it moved from a FedEx facility to another location. PX 61 at 32:11-17; 53:23-54:6.

404. During the Rule 30(b)(6) deposition of FedEx Express, Fed Ex Express's 30(b)(6) representative explained that the pickup date could potentially be the day before the ship date, depending on the time that the package was picked up by FedEx Express. PX 61 at 53:23-54:6.

405. The third tab of PX 87 is titled "Never Shipped Acct 698994177" ("Never Shipped"). PX 87.

406. The "Never Shipped" tab contains information for tracking numbers where a shipment label was created, but no package was shipped. PX 61 39:14-40:5.

407. The packages corresponding to the tracking numbers in this tab were never picked up or delivered. PX 61 39:14-40:5, 43:23-44:2.

408. In the "Never Shipped" tab, Column B is identified as "Ship Date." PX 87.

409. As FedEx Express's corporate representative explained, the Ship Date is actually the date the label was created, not an actual ship date. PX 87; PX 61 42:19-43:9.

410. Ship date is initially populated with the date of label creation, but if the package is not actually picked up and shipped, the date will remain the label creation date. PX 87; PX 61 42:19-43:9.

411. The shipments in this tab do not have delivery dates because they were not delivered. PX 87; PX 61 43:23-44:8.

412. The fourth tab of PX 87 is titled "Trackint [sic] #'s Not Found" ("Tracking Number Not Found"). PX 87.

413. The Tracking Number Not Found tab contains tracking numbers that FedEx Express could not find in their system. PX 61 at 44:13-23.

414. FedEx Express testified that these tracking numbers may belong to another FedEx entity like FedEx Ground. PX 61 at 45:14-46:13.

415. FedEx Express never had a trailer located at Zaappaaz's Sugarland, TX warehouse. PX 61 at 50:10-12.

416. FedEx Express never had a pickup box located at Zaappaaz's Sugarland, TX warehouse. PX 61 at 50:13-16.

417. If Zaappaaz had packages they wanted FedEx Express to pick up, they would have to call FedEx Express for a pickup, or drop off the package themselves. PX 61 at 50:25-51:8.

iv. FedEx Freight Shipping Data

418. PX 94 (FTC0004707) and PX 95 (FTC0004678) contain a history of the FedEx Freight shipments from Zaappaaz LLC and Ionized LLC. PX 64 at 21:3-17; 28:2-23.

419. PX 94 and PX 95 contain information relating to billing date, tracking number, pickup date and time, and delivery date and time. PX 64 at 23:2-22; 25:22-26:3; 27:11-28:1; and 29:20-30:1.

420. Billing date is the date that FedEx Freight billed the shipment and picked up the package. PX 64 at 23:2-12.

421. If the pickup date and time ("cust_oprig_dprt_tmstp") is blank, the package pickup date is available in the billing date column. PX 64 at 25:22-26:3; 27:15-28:1.

422. FedEx Freight never had a trailer located at Zaappaaz's Sugarland, TX warehouse. PX 64 at 30:12-31:15.

423. FedEx Freight never had a pickup box located at Zaappaaz's Sugarland, TX warehouse. PX 64 at 31:16-22.

424. FedEx Freight never left a receptacle at Zaappaaz's Sugarland, TX warehouse. PX 64 at 32:8-11.

425. FedEx Freight never left a vehicle at Zaappaaz's Sugarland, TX warehouse. PX 64 at 32:12-15.

426. FedEx Freight did not have a regular, recurring pick up scheduled at Zaappaaz's Sugarland, TX warehouse. PX 64 at 32:16-20.

427. Zaappaaz called FedEx Freight to request on-site package pickups. PX 64 at 32:16-25.

428. Zaappaaz could also request pickups online. PX 64 at 34:20-35:6.

429. FedEx Freight scans packages onsite at the customer's pickup location, and that data is reflected in Columns A and L of PX 94 and PX 95. PX 64 at 33:23-34:9; PX 94, PX 95.

430. Customers may drop packages off at a FedEx Freight facility. PX 64 at 35:13-15.

431. Packages that are dropped off at a FedEx Freight facility are scanned at the time the package is dropped off. PX 64 at 35:16-21.

v. FedEx Ground Shipping Data

432. FedEx Ground produced PX 89 (FedEx-Ground_0001), PX 91 (FTC0004654), and PX 92, (FTC0004686) to the FTC pursuant to a subpoena. PX 63 at 22:9-17; 36:12-37:20; 37:25-38:1.

433. PX 89 contains pickup and delivery information for packages that were picked up from 12505 Reed Road and delivered in the FedEx Ground network. PX 63 at 21:6-22:8; 23:7-18; 35:8-19.

434. Each worksheet in PX 89 includes data columns for the package ship date, delivery date, and tracking number. PX 89; PX 63 at 28:22-29:21; 29:24-30:11; 31:6-9; 35:1-7.

435. The ship date is the date the shipping label is printed by the customer. PX 63 at 28:22-29:21.

436. The ship date is the best information FedEx Ground has to identify when the package was actually picked up. PX 63 at 71:6-19.

437. Ship date is the date that the label was created and the trailer would have been picked up. PX 63 at 74:19-22.

438. PX 91, FTC0004654, shows pickup information for the tracking numbers that were included in PX 89. PX 63 at 36:12-37:20.

439. PX 91 includes data columns for the package tracking number and the pickup date. PX 91; PX 63 at 39:14-17; 39:18-40:12.

440. The package pickup date is the date the label was created for the package to be shipped out and when it would have been picked up. PX 63 at 39:18-40:12; 74:19-22.

441. The pickup date is the best date FedEx Ground has to determine when a package was picked up and scanned into its system. PX 63 at 63:6-9.

442. The ship date in PX 89 and pickup date in PX 91 each have the same date for a tracking number. PX 63 at 59:11-21.

443. The FedEx Ground corporate representative explained that to find the proper package pickup date, remove the leading 1, and then the date is in a two-digit year format in the following order—year, month, day—so the first date, 1200331, means March 31, 2020. PX 63 at 41:21-42:6.

444. PX 92, FTC0004686, shows the dates that FedEx Ground trailers were picked up from the Zaappaaz location between March and December 2020 (which is the same location as the Ionized site). PX 92; PX 63 at 42:11-43:13.

445. PX 92 includes the transaction date, the date that a FedEx Ground trailer was picked up from Zaappaaz/Ionized. PX 92; PX 63 44:12-45:22.

446. If there are multiple entries for the same date, that means multiple trailers were picked up from the Zaappaaz/Ionized site the same day. PX 63 at 45:12-22.

447. Standard pickup for the FedEx Ground trailers at the Zaappaaz/Ionized site was Monday through Friday, excluding holidays. PX 63 at 50:24-51:22.

448. If Zaappaaz/Ionized wanted additional pickups they would request them, and FedEx Ground would let them know if they would be able to make the additional pickup. PX 63 at 50:24-51:7.

449. Ms. Miles calculated that from March to December 2020, there was only one non-holiday weekday (December 24, 2020, Christmas Eve) that the FedEx Ground trailer was not picked up from the Zaappaaz/Ionized site. PX 99 ¶ 27.

450. Ms. Miles calculated that there were 126 days between March 2, 2020 and December 31, 2020 where FedEx Ground picked up more than one trailer on the same day. PX 99 ¶ 27.

vi. UPS Shipping Data

451. Pursuant to an FTC subpoena, UPS produced several documents, including PX 68, containing detailed tracking data for tracking numbers provided by the FTC. PX 68; PX 114 ¶¶ 4, 5, 7.

452. PX 68 contains information including the package's tracking number, the date the package was picked up, the date the package was delivered, and whether the package was delivered. PX 68; PX 114 ¶ 7.a.

vii. USPIS Shipping Data

453. Pursuant to a request from the FTC, the USPIS provided PX 65, providing detailed shipping and delivery information for specific USPIS tracking numbers. PX 69 ¶¶ 2, 4, 5, 6; PX 65.

454. In this spreadsheet, "LabelNumber" indicates the tracking number associated with the mailing. PX 69 ¶ 7.a.

455. The "FirstScanTimestamp" indicates the date and time a package was first processed on United States Postal Service ("USPS") processing equipment. PX 69 ¶ 7b.

456. The "LastScanTimestamp" indicates the delivery date and time for the package. PX 69 ¶ 7d.

viii. Stripe Refund Information

457. In response to the FTC's discovery requests, Zaappaaz produced a spreadsheet containing amounts of refunds Stripe provided consumers because of chargeback disputes. PX 84; PX 51 at 81:1-7.

458. In response to a subpoena, Stripe produced a spreadsheet containing amounts of refunds Stripe provided consumers because of chargeback disputes. PX 21.⁴

ix. Amazon Refund Information

459. In response to a subpoena, Amazon produced a spreadsheet containing amounts of refunds Amazon provided consumers because of chargeback disputes. PX 97; PX 102.

460. Amazon had also produced a spreadsheet to the FTC in support of the FTC's motion for a temporary restraining order. PX 96; PX 103.

B. The Summary of Defendants' Shipping Data Shows That They Violated MITOR Tens of Thousands of Times.

461. Defendants' Master Chart (PX 57) shows 97,967 PPE orders from March 2020 to December 2020. PX 99 ¶ 5; PX 57 (Master Chart).

462. For 6,051 or 6.2% of those orders, Defendants did not provide any tracking number. PX 99 ¶ 14; PX 57 (Master Chart).

463. For 4,471 or 4.6% of those orders, Defendants provided a tracking number without shipment or delivery information. PX 99 ¶ 18; PX 57 (Master Chart).

464. Ms. Miles supplemented Defendants' information with third party carrier data obtained by subpoena described above. PX 99 ¶¶ 7-13; *see also supra* ¶¶ 394, 399, 418, 432, 451, 453.⁵

465. Ms. Miles tallied Defendants' orders into different categories. PX 99 ¶, 453 21.

⁴ Use code Spring*2021! to open file.

⁵ The FTC did not subpoena USPS for shipping records. USPS provided the records to the FTC voluntarily.

466. In order to summarize the shipment status of the orders, Ms. Miles first eliminated 253 orders (0.3%) with contradictory, missing or invalid pickup data. PX 99 ¶ 21.

467. Ms. Miles calculated that 39,276 orders (40.2%) were shipped on time. PX 99 ¶ 21.

468. Ms. Miles calculated that 58,168 orders (59.5%) were shipped late or not at all. PX 99 ¶ 21.

469. To determine whether an order was shipped late, Ms. Miles compared the order date and Defendants' promised production days to the actual date the order shipped. PX 99 ¶ 20.

470. Of the 58,168 orders that were shipped late or not shipped at all, only 5,586 (9.6%) received any refund. PX 100 ¶ 21.

471. To determine whether an order was delivered late, Ms. Miles compared the promised delivery date provided by Defendants to the actual package delivery date. PX 99 ¶ 24.

472. Ms. Miles calculated that 61,594 orders (63%) were delivered late or not delivered at all. PX 99 ¶ 25.

473. Ms. Miles calculated that 36,103 orders (37%) were delivered on time. PX 99 ¶ 25.

C. Defendants' MITOR Violations Caused \$37 Million In Consumer Injury

474. FTC Forensic Accountant Rufus L.M. Jenkins used Ms. Miles' calculations to determine the amount of money associated with each order. PX 100 ¶¶ 3-4.

475. Mr. Jenkins calculated that Defendants' gross revenue for PPE orders between March and December 2020 was \$59,017,448.31. PX 100 ¶ 5.

476. Of this gross revenue for Defendants, Mr. Jenkins determined that \$12,590,748.43 related to on-time shipments. PX 100 ¶ 6.

477. Orders with indeterminate carrier data accounted for \$79,625.74 of this revenue. PX 100 ¶ 7.

478. Refunds in the amount of \$8,797,602.00 were returned to consumers either directly by Defendants, or through payment processing entities. PX 100 ¶¶ 8-9, Tables 1, 2.

479. Mr. Jenkins subtracted all revenue for on-time shipments, as well as those orders with indeterminate carrier data, and all funds returned to consumers from his gross revenue calculation to determine non-refunded amounts consumers paid for those orders that were not shipped on time. PX 100 ¶¶ 5-10.

480. Using that method, Mr. Jenkins calculated injury to be \$37,549,472.14, after subtracting on time orders and refunds from Defendants' gross revenue. PX 100 ¶¶ 5-10.

481. Mr. Jenkins performed an alternative calculation that also excluded orders where the data from FedEx Express did not include a pickup date. Based on that method, Mr. Jenkins determined that Defendants' net revenue for those orders was \$31,075,503.61. PX 99 ¶¶ 17, 23 (Ms. Miles identified FedEx Express orders that were only late based on a shipping date provided by FedEx Express and did not have a pickup date); PX 100 ¶¶ 11-16.

482. Mr. Jenkins also calculated Defendants' net revenue considering only orders that were undelivered and unrefunded. PX 100 ¶¶ 17-21.

483. Defendants' net revenue from undelivered and unrefunded orders was \$12,241,035.69. PX 100 ¶ 20.

INDEX TO THE FTC'S STATEMENT OF UNCONTESTED MATERIAL FACTS

<u>Plaintiff's Summary Judgment Exhibit ("PX")</u>	<u>Document*</u>
1	August 3, 2020 Declaration of Adam Rottner and Attachments, ECF 8-1 ¹
2	Declaration of Susan Alimonti and Attachments, ECF 10-1
3	FTC v Zaappaaz Complaint, ECF 1
4	April 19, 2020 Wrist-Band.com Customer Notice
5	Declaration of Rhiannon Guevin and Attachments, ECF 10-4
6	Declaration of Andrew Li and Attachments, ECF 10-5
7	Declaration of Mechelle Braswell and Attachments, ECF 10-6
8	Declaration of Amy Russell and Attachments, ECF 11-1
9	Declaration of Gary Hendricks and Attachments, ECF 11-2
10	Declaration of Jason Pierson and Attachments, ECF 11-3
11	Declaration of Carol J. Faber, ECF 11-4
12	Declaration of Larry E. Faber and Attachments, ECF 11-5
13	Wrist-Band.com PPE Webpage
14	May 26, 2020 Email from Doug Golden, PayPal
15	May 26, 2020 Email from Braintree
16	October 19, 2020 First Set of RFPs to Zaappaaz
17	October 16, 2020 Email from Karishma Sharif, Empire Paytech
18	May 18, 2020 Email from Karishma Sharif, Empire Paytech
19	July 29, 2020 Email from Karishma Sharif, Empire Paytech
20	June 10, 2020 Email from Khalil Maknojia
21	April 23, 2021 Stripe Refund Spreadsheet, Stripe_000001* [use code Spring*2021! to open]
22	August 11, 2021 Azim Makanojiya and Zaappaaz 30(b)(6) Deposition Transcript
23	April 8, 2020 Email from Consumer
24	October 15, 2020 Email from Azim Makanojiya
25	April 19, 2020 Wrist-Band.com Consumer Notice
26	May 3, 2020 Wrist-Band.com Consumer Notice Re Disposable Gowns
27	May 3, 2020 Wrist-Band.com Consumer Notice Re Disposable Gowns
28	May 3, 2020 Wrist-Band.com Consumer Notice Re Reusable Cloth Face Masks
29	May 3, 2020 Wrist-Band.com Consumer Notice Re Reusable Cloth Face

* Microsoft Excel files, denoted by an asterisk (*), have been provided to the Court in native format.

¹ Due to the large file size of the August 3, 2020 Declaration of Adam Rottner and Attachments (PX 1), his declaration was split into 2 parts. The second half of the declaration can be found at PX 118 below.

	Masks
30	OmniSend Advertisement Information*
31	Google Ads Information*
32	April 10, 2020 Email from Dan Lubic, FedEx
33	Google Search Terms Spreadsheet*
34	Microsoft Advertisement Information*
35	August 24, 2020 Email from Consumer
36	June 29, 2020 Email from Shopper Approved
37	May 4, 2020 Consumer Complaint
38	Wrist-Band.com Return Policy
39	Wrist-Band.com Terms and Conditions
40	May 28, 2020 Email from Darren Schmidt, FedEx
41	Notification re Amazon Pay Account
42	August 12, 2021 Azim Makanojiya and Zaappaaz 30(b)(6) Deposition Transcript
43	October 20, 2021 Order, ECF 65
44	May 5, 2020 Email from Consumer
45	October 15, 2020 Email from Bill Streb, FAA
46	August 13, 2020 Email from Bill Streb, FAA
47	December 14, 2021 Azim Makanojiya and Zaappaaz 30(b)(6) Deposition Transcript
48	October 15, 2020 Email from Karishma Sharif, Empire Paytech
49	2020 Chargeback Report*
50	May 1, 2020 Email from Braintree
51	February 3, 2022 Azim Makanojiya and Zaappaaz 30(b)(6) Deposition Transcript
52	Amazon Pay Consumer Claim
53	April 22, 2020 Email from Consumer
54	March 13, 2022 Complaint Summary*
55	July 7, 2020 Email from Darren Schmidt, FedEx
56	March 14, 2022 Adam Rottner Declaration re Complaint Summary
57	Master Chart, Zaappaaz 0020596*
58	June 1, 2020 Email from Darren Schmidt, FedEx
59	March 28, 2020 – December 8, 2020 WhatsApp Transcript
60	DHL Shipment Records, DHL0000006*
61	FedEx Express 30(b)(6) Deposition Transcript
62	DHL Shipment Records, FTC0004573*
63	FedEx Ground 30(b)(6) Deposition Transcript
64	FedEx Freight 30(b)(6) Deposition Transcript
65	USPIS Shipping and Delivery Information, FTC0004938*
66	March 1, 2020 – December 20, 2020 WhatsApp Transcript
67	February 5, 2020 – September 19, 2020 WhatsApp Transcript
68	UPS Tracking Information, UPS 0000654*
69	Declaration of Amanda Weisbacker, USPIS
70	June 10, 2020 Email from Consumer

71	July 14, 2020 Email from Consumer
72	May 7, 2020 Email from Consumer
73	October 24, 2022 Declaration of Adam Rottner
74	September 18, 2020 Email re Consumer Inquiry
75	November 3, 2020 Email to Consumer
76	July 13, 2020 Email from Consumer
77	July 17, 2020 Email from Shopper Approved
78	April 17, 2020 Email from Consumer
79	July 7, 2020 Email from Consumer
80	July 14, 2020 Email from Consumer
81	June 22, 2020 Email from Consumer
82	April 19, 2020 Email re Consumer Inquiry
83	April 9, 2020 Email from Consumer
84	Stripe Refund Spreadsheet, Zaappaaz 0020791*
85	July 16, 2020 Email from Consumer
86	FedEx Express Shipment and Delivery Information, FedEx-EXpress_00093708*
87	FedEx Express Shipment and Delivery Information, FTC0003086*
88	April 14, 2020 Email from Consumer
89	FedEx Ground Pickup and Delivery Information, Fedex-Ground_00001*
90	April 3, 2020 Email from Consumer
91	FedEx Ground Pickup Information, FTC0004654*
92	FedEx Ground Trailer Pickup Dates, FTC0004686*
93	April 16, 2020 Email from Consumer
94	FedEx Freight Shipment and Delivery Information, FTC0004707*
95	FedEx Freight Shipment and Delivery Information, FTC0004678*
96	Amazon Chargeback Transactions, Amazon_0000002*
97	Amazon Chargeback Transactions, Amazon_0000098*
98	Declaration of Janice Morrison, DHL
99	Declaration of Elizabeth Anne Miles, FTC Data Analyst
100	Declaration of Rufus L.M. Jenkins, FTC Forensic Accountant
101	April 14, 2020 Email from Consumer
102	Amazon Certificate of Records
103	Amazon Certification
104	November 3, 2020 Email from Wrist-Band.com
105	November 2, 2020 Email from Wrist-Band.com
106	October 29, 2020 Email from Fiserv
107	September 10, 2020 Email from Stripe Support
108	April 14, 2020 Email from Consumer
109	December 11, 2017 Judgement in a Criminal Case
110	May 13, 2019 Judgement in a Criminal Case
111	July 5, 2020 Email from Consumer
112	April 8, 2020 Email from Consumer
113	April 30, 2020 Email from Consumer
114	Declaration of Sonja D. Jackson, UPS

115	Defendants' Answer, ECF 29
116	May 31, 2020 Email from Darren Schmidt, FedEx
117	September 9, 2021 Khalil Maknojia Deposition Transcript
118	Continued Attachments to August 3, 2020 Rottner Declaration, ECF 9-1